

CA2ALQG
1945T78
V.95.



3 3398 00207 6924

The Province of Alberta

IN THE MATTER OF "THE NATURAL
GAS UTILITIES ACT"

—and—

IN THE MATTER OF an Enquiry into
Scheme to be adopted for Gathering,
Processing and Transmission of
Natural Gas in Turner Valley

G. M. BLACKSTOCK, Esq., K.C., *Chairman*

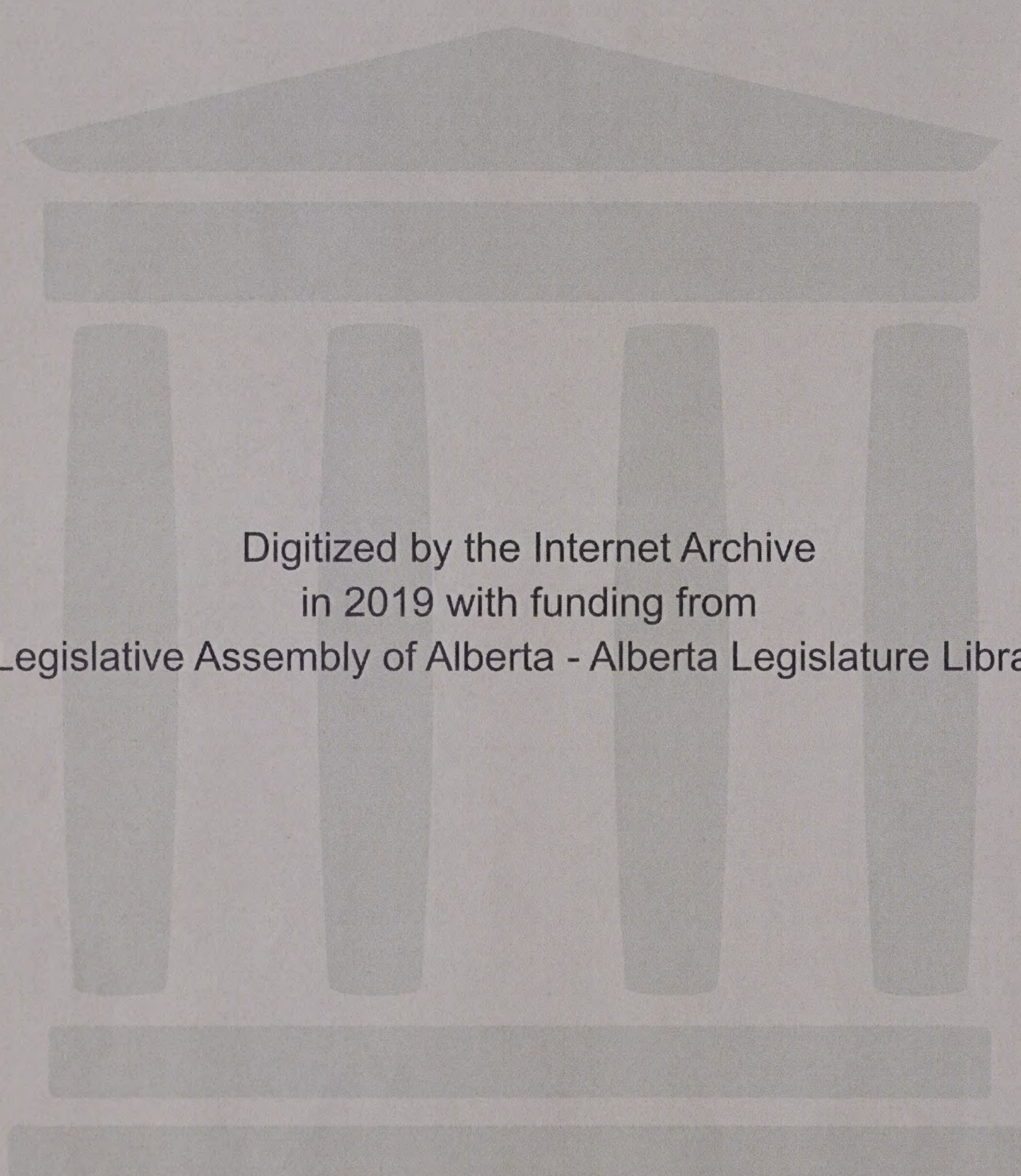
Dr. E. H. BOOMER, F.C.I.C., *Commissioner*

Session:

CALGARY, Alberta May 19, 1947.

VOLUME 1.

CONSOLIDATED MINING & SMELTING CO.LTD. APPLICATION.



Digitized by the Internet Archive
in 2019 with funding from
Legislative Assembly of Alberta - Alberta Legislature Library

IN THE MATTER OF THE NATURAL GAS
UTILITIES ACT

AND IN THE MATTER OF the decision
of the Natural Gas Utilities Board
dated the 24th day of March, A.D.
1947 and the Order or Orders made
thereunder

APPLICATION OF

THE CONSOLIDATED MINING AND SMELTING
COMPANY OF CANADA, LIMITED.

HEARING BEFORE

G. M. Blackstock, Esq., K. C. Chairman.

A. G. Bailey, Esq.,

commencing at The Court House, Calgary, on
the 19th day of May, 1947.

PRESENT:

G. W. Auxier, Esq., K. C.

G. H. Steer, Esq., K. C.

L. H. Fenerty, Esq., K. C.

E. J. Chambers, Esq., K. C.

R. H. C. Harrison, Esq., K. C.

D. P. McDonald, Esq., K. C.

: : : : :

IN THE MATTER OF THE ESTATE OF
WILLIAM A. BROWN

AND IN THE MATTER OF THE ESTATE OF
THE ESTATE OF THE UNITED STATES
DATED AND ORDERED BY THE COURT
IN THE MATTER OF THE ESTATE OF
WILLIAM A. BROWN

DECLARATION OF

THE ESTATE OF THE UNITED STATES
IN THE MATTER OF THE ESTATE OF
WILLIAM A. BROWN

RECEIVED BY THE COURT

J. H. BROWN, Esq., Clerk of the Court

A. B. BROWN, Esq., Attorney at Law

RECEIVED BY THE COURT

THE ESTATE OF THE UNITED STATES

IN THE MATTER OF THE ESTATE OF

WILLIAM A. BROWN

DECLARATION OF

THE ESTATE OF THE UNITED STATES

IN THE MATTER OF THE ESTATE OF

WILLIAM A. BROWN

DECLARATION OF

THE ESTATE OF THE UNITED STATES

IN THE MATTER OF THE ESTATE OF

WILLIAM A. BROWN

DECLARATION OF

THE ESTATE OF THE UNITED STATES

IN THE MATTER OF THE ESTATE OF

WILLIAM A. BROWN

MR. AUXIER: There are some changes I would ask leave to make in our submission and in the schedules. Some of them are typographical errors but several are required by an error which we made in taking the total gas consumption of The Canadian Western system. We had taken figures which excluded our load and we thought at the time they included it. The changes are these - I am going to point out the changes as I have not had the opportunity of having new submissions prepared. The changes are not too extensive.

In the first place on page 7, under the section marked Section 5, in taking the load factor of the applicant as compared with that of the system it should be "load factor and the load factor of the balance of the Canadian Western system," rather than the Canadian Western system and the figures are July - 471,210 and December - 1,680,978 or 28.03%; and that changes the ratio of the load factor also from 1 to 2.62.

The next paragraph (f) on the Notice of Motion with the required amendments merely adds to the load factor.

THE CHAIRMAN: That will be (f)?

MR. AUXIER: That is in (f), yes. On page 9, in dealing with Schedule "D" - and I will submit new copies of Schedule "D" - the peak month would have increased, seven or eight lines from the top, instead of 1,859,000 to 2,090,972 and the peak figures, a couple of lines below are wrong. It should be about 106 instead of about 111, and an increase of about 25 rather than 30%. I have also changed - my own unfamiliarity with Public Utility practice leading me up the wrong avenue there - I would like to change the paragraph, the

second paragraph on that page also, changing (b) in the Application there. I have copies of the amended paragraph. (Amended paragraph filed.)

Then on page 10, the third paragraph the cost of substitutes again necessitates, by our not considering the Nitrogen load to be included in the figures which we had, the cost price would be increased from 2.17 to 2.48. I am going, in addition, to submit a new Schedule "E" prepared after obtaining more specific information than we had at the time and that will necessitate a couple of changes in the fourth paragraph under Cost of Substitute. The Scrubbing Plant will be 800 horsepower rather than 1200.

THE CHAIRMAN: In the fourth paragraph?

MR. STEER: The second line in the fourth paragraph.

THE CHAIRMAN: Yes, 800 instead of 1200.

MR. AUXIER: 800 instead of 1200 and the cost in the fifth line of that paragraph 5.49 rather than 5.44.

The change in the figures concerning the total load necessitated doing over Schedule "D" and that and Schedule "E" I have new copies of which I will now ask leave to submit.

THE CHAIRMAN: Have you two of these?

MR. AUXIER: Two of those, yes.

THE CHAIRMAN: And one for the Court Reporter.

MR. HARRISON: That is Schedule "D" is a complete substitution?

MR. AUXIER: Yes, both of these are. There are two or three corrections also, Mr. Chairman, in Schedule "B".

THE CHAIRMAN: Is that corrections in the substitute?

MR. AUXIER: No, Schedule "B". I might just go over

second paragraph on that page also, changing (b) in the application there. I have copies of the amended paragraph. (Amended paragraph filed.)

Then on page 10, the third paragraph.

The cost of application again requested, by our not being the letter load to be included in the figures which we have put price would be increased from \$1.15 to \$1.18. I am going to addition to submit a new Schedule "B" prepared after obtaining more specific information than we had at the time and that will necessitate a couple of changes in the fourth paragraph under Cost of Submission. The remaining item will be \$800 necessary rather than \$200.

In the fourth paragraph.

THE CHAIRMAN:

The second line in the fourth paragraph.

MR. STUBBS:

Yes, \$200 instead of \$200.

THE CHAIRMAN:

\$200 instead of \$200 and the cost of the

MR. AUSTIN:

line of that paragraph \$1.15 rather than \$1.18.

The change in the figures concerning

the total load necessitated doing over Schedule "B" and that and

Schedule "B" I have new copies of which I will now ask leave to

Have you two of these?

THE CHAIRMAN:

Two of these, yes.

MR. AUSTIN:

And one for the Court Reporter.

THE CHAIRMAN:

That is Schedule "B" is a complete

MR. HARRISON:

Yes, both of these are. There are two

MR. AUSTIN:

or three corrections also, Mr. Chairman, in Schedule "B".

THE CHAIRMAN:

Is that corrections in the exhibits?

MR. AUSTIN:

No, Schedule "B". I might just go over

them. Under Spencer Chemical, the third column, that distance transmitted is 407 rather than 473 miles and the domestic price in the area, under Spencer Chemical, which we did not have at the time and now have, is 55 cents. Under Cactus Arsenals, the fourth column, the figure of 10.3 there should be added to that "Formerly paid 2.8 on an interruptable basis." Under Commercial Solvents, the next column, the domestic price in the area is 30 cents rather than 20 cents. Under Mathieson Alkali, the price and conditions, instead of 7 cents an Mcf or less you might add 7 cents ranging down to 4 cents per Mcf. And the Commercial price in the area which we did not have at the time is 50 cents. Under Missouri Ordnance the last column, the price should be - it is in the third line down - should be 30 cents rather than 20 cents, and a note "previously 20 cents to other large industrial users in the area." On that 20 cents that evidence will be tendered. That will necessitate a change in the next comparative price 14.4 at 60 degrees to 29.4 rather than 19.6.

THE CHAIRMAN: That figure again?

MR. AUXIER: 29.4 in place of 19.6. Then there should be added, at least I would ask leave to add an additional line "Approximate volumes in millions of cubic feet per day" and under the first column it will be 9 million and Lion Chemicals, 18.

MR. COMMISSIONER BAILEY: That is Mcf's?

MR. AUXIER: No, this was in millions of cubic feet. 9 and under Lion Chemical 18, Spencer Chemical- 12.3. Cactus Arsenals we have not been able to obtain. Commercial Solvents, 13.6. Mathieson Alkali, 16. And Missouri Ordnance, 12. We thought that information should be obtained in order that they can be properly prepared. I would ask leave, Mr. Chairman, to submit - and I presume it should be marked as an exhibit - if

them. Under Speaker Chemical, the third column, that distance
transmitted is 407 rather than 475 miles and the domestic price
in the area. Under Speaker Chemical, which we did not have at
the time and now have, is 55 cents. Under Speaker Chemical, the
fourth column, the figure of 10.5, that should be added to that
"previously paid 2.8 on an interregional basis." Under Speaker
Chemical, the next column, the domestic price in the area is
50 cents rather than 50 cents. Under Speaker Chemical, the
price and conditions, instead of 7 cents a lot of less you might
and 7 cents ranging down to 4 cents per lot. And the commercial
price in the area which we did not have at the time is 50 cents.
Under Speaker Chemical, the last column, the price should be
10.5 in the third line down, should be 50 cents rather than
50 cents, and a note "previously 50 cents to other large
interregional areas in the area." On that 50 cents that evidence
will be furnished. That will necessitate a change in the next
comparative price list at 50 cents to 50.4 rather than 50.5.
The Chairman: That might be right.
Mr. Aukerman: 50.4 is place of 10.5. Then there should
be added, at least I would ask leave to add an additional line
"Approximate volume in millions of cubic feet per day" and under
the first column it will be 9 million and Lion Chemical, 18.
Mr. Commissioner Aukerman: That is correct.
Mr. Aukerman: No, this was in millions of cubic feet.
9 and under Lion Chemical 18, Speaker Chemical - 18.5. That
distance we have not been able to obtain. Commercial Solvents,
18.5. Speaker Chemical, 18. And distance 18.5.
I think that information should be collected in order that they
can be properly prepared. I would ask leave, Mr. Commissioner, to
submit - and I presume it should be marked as an exhibit - 10

that is your proper practice - a revised copy of the submission.

THE CHAIRMAN: I was going to ask you to do that,

Mr. Auxier. Well that will be Exhibit 1 when the time comes.

REVISED SUBMISSION, CONSOLIDATED
MINING AND SMELTING COMPANY IS
NOW MARKED EXHIBIT 1.

MR. AUXIER: I was wondering whether you wanted to
carry on with the exhibit numbering in the original enquiry.

THE CHAIRMAN: No, we will start a new one.

MR. AUXIER: I have a copy of this which I will
have Mr. Morris put in.

Before calling Mr. Morris, I might
just repeat what I said a month ago when this motion was adjourned,
that while there are a number of things in the Decision with
which we do not agree and we do not wish to abandon any position
we might wish to take later with respect thereto, we have no
intention at this stage of raising any question or attacking in
any way the decision with respect to the major issues, that is
the general justice of the three prices, to the producer, the
calculation of the rate base of the various companies involved
or the rate of return. We have no information to add to the
mass of information that has already been presented to you and
it would be presumptuous, I think, for me to attempt to add any-
thing by way of Argument on those points to what has already
been said by Mr. Steer and Mr. Fenerty. We are asking only on
this application to put forward the facts respecting our own
position and persuade you, if we can, that our position should
be varied with respect to the uniformity of the prices to the
producer and to the Madison company at the gate. We think that
the load of the Applicant and the various characteristics of that
load warrant a reduction in price which might have to be offset

CHAPTER 10

The first part of the chapter discusses the importance of maintaining accurate records of all transactions. This is essential for the proper management of the business and for the preparation of financial statements. The second part of the chapter deals with the various methods of accounting for the different types of assets and liabilities. The third part of the chapter discusses the various methods of accounting for the different types of income and expenses. The fourth part of the chapter discusses the various methods of accounting for the different types of equity accounts. The fifth part of the chapter discusses the various methods of accounting for the different types of contra accounts. The sixth part of the chapter discusses the various methods of accounting for the different types of adjusting entries. The seventh part of the chapter discusses the various methods of accounting for the different types of closing entries. The eighth part of the chapter discusses the various methods of accounting for the different types of financial statements. The ninth part of the chapter discusses the various methods of accounting for the different types of internal controls. The tenth part of the chapter discusses the various methods of accounting for the different types of external controls. The eleventh part of the chapter discusses the various methods of accounting for the different types of tax accounting. The twelfth part of the chapter discusses the various methods of accounting for the different types of international accounting. The thirteenth part of the chapter discusses the various methods of accounting for the different types of computerized accounting. The fourteenth part of the chapter discusses the various methods of accounting for the different types of environmental accounting. The fifteenth part of the chapter discusses the various methods of accounting for the different types of social accounting. The sixteenth part of the chapter discusses the various methods of accounting for the different types of sustainability accounting. The seventeenth part of the chapter discusses the various methods of accounting for the different types of corporate governance accounting. The eighteenth part of the chapter discusses the various methods of accounting for the different types of stakeholder accounting. The nineteenth part of the chapter discusses the various methods of accounting for the different types of value-based accounting. The twentieth part of the chapter discusses the various methods of accounting for the different types of integrated reporting. The twenty-first part of the chapter discusses the various methods of accounting for the different types of non-financial reporting. The twenty-second part of the chapter discusses the various methods of accounting for the different types of social and environmental reporting. The twenty-third part of the chapter discusses the various methods of accounting for the different types of corporate social responsibility reporting. The twenty-fourth part of the chapter discusses the various methods of accounting for the different types of corporate social performance reporting. The twenty-fifth part of the chapter discusses the various methods of accounting for the different types of corporate social impact reporting. The twenty-sixth part of the chapter discusses the various methods of accounting for the different types of corporate social value reporting. The twenty-seventh part of the chapter discusses the various methods of accounting for the different types of corporate social contribution reporting. The twenty-eighth part of the chapter discusses the various methods of accounting for the different types of corporate social investment reporting. The twenty-ninth part of the chapter discusses the various methods of accounting for the different types of corporate social philanthropy reporting. The thirtieth part of the chapter discusses the various methods of accounting for the different types of corporate social responsibility reporting. The thirty-first part of the chapter discusses the various methods of accounting for the different types of corporate social performance reporting. The thirty-second part of the chapter discusses the various methods of accounting for the different types of corporate social impact reporting. The thirty-third part of the chapter discusses the various methods of accounting for the different types of corporate social value reporting. The thirty-fourth part of the chapter discusses the various methods of accounting for the different types of corporate social contribution reporting. The thirty-fifth part of the chapter discusses the various methods of accounting for the different types of corporate social investment reporting. The thirty-sixth part of the chapter discusses the various methods of accounting for the different types of corporate social philanthropy reporting. The thirty-seventh part of the chapter discusses the various methods of accounting for the different types of corporate social responsibility reporting. The thirty-eighth part of the chapter discusses the various methods of accounting for the different types of corporate social performance reporting. The thirty-ninth part of the chapter discusses the various methods of accounting for the different types of corporate social impact reporting. The fortieth part of the chapter discusses the various methods of accounting for the different types of corporate social value reporting. The forty-first part of the chapter discusses the various methods of accounting for the different types of corporate social contribution reporting. The forty-second part of the chapter discusses the various methods of accounting for the different types of corporate social investment reporting. The forty-third part of the chapter discusses the various methods of accounting for the different types of corporate social philanthropy reporting. The forty-fourth part of the chapter discusses the various methods of accounting for the different types of corporate social responsibility reporting. The forty-fifth part of the chapter discusses the various methods of accounting for the different types of corporate social performance reporting. The forty-sixth part of the chapter discusses the various methods of accounting for the different types of corporate social impact reporting. The forty-seventh part of the chapter discusses the various methods of accounting for the different types of corporate social value reporting. The forty-eighth part of the chapter discusses the various methods of accounting for the different types of corporate social contribution reporting. The forty-ninth part of the chapter discusses the various methods of accounting for the different types of corporate social investment reporting. The fiftieth part of the chapter discusses the various methods of accounting for the different types of corporate social philanthropy reporting.

T-1-6

Corrections to Submission. - 6 -

by an increase in price somewhere else, and that these factors cannot be given proper effect to only on an application under the Public Utilities Act, under which we felt we would probably be met immediately by the existing gate prices. We feel we have to have some concession with respect to our load up to the gate as well as beyond it. I would like to call Mr. Morris. I do not know how in this court room you place the witness.

THE CHAIRMAN: It is very awkward but we generally have the witness stand over here.

(Go to page 7.)

Argument re Jurisdiction
by Mr. Steer.

- 7 -

MR. STEER: Before Mr. Auxier goes on I would like to say something. As I understand, Sir, this application is made on behalf of Consolidated Mining & Smelting Company Limited which virtually, if not in fact, has been a customer of The Canadian Western Company throughout all times relevant to these proceedings. Whether consolidated was actually owner or not the undertaking was represented before your Board and the demands of this industry, as your Judgment shows, were very fully considered by your Board in reaching its decision, and that decision was that for gas supplied to the Canadian Western Company at the outlet of the Madison scrubber, a price of 9 cents should be paid, and that included in that price there were well head prices which varied, it is true, but which varied due to conditions in the field and did not vary on the grounds that are put forward here for a variation in price, and that point I will deal with later.

The application is one presumably being made under Section 41 of The Natural Gas Utilities Act. It is not an application to re-hear, it is an application to review and vary that. That section reads:-

"The Board may re-hear an application before deciding it."

Now the Board has given its decision in this case and this application is made with respect to a decision that is already given, so that there is no question of re-hearing, and if there is any question of re-hearing, then, in my submission, new evidence cannot be taken on an application to review the decision or order, which is what this application is. So that in the first place I say that if this is an application to review and not an application to re-hear, then new evidence

100

• • • • •

Argument re Jurisdiction
by Mr. Steer.

- 8 -

cannot be heard. On the other hand, if it be regarded as an application to re-hear, then the decision has been made and there is no jurisdiction in the Board to re-hear when its decision has been made.

Leaving that to one side, the application is to alter the price to be paid by Canadian Western at the outlet of the Madison scrubber for gas, depending upon the use that is going to be made of that gas by a customer after Canadian Western delivers it, and similarly, the application is to alter the well head price on the same basis. In effect they are asking that different prices be fixed by your Board for gas delivered to a public utility, namely, Canadian Western, at the outlet of the Madison scrubber, depending upon whether ultimately Canadian Western is going to deliver that gas to Consolidated or to any other customer on its system. And the application, as a perusal of the Notice of Motion and of the Submission shows, is made on those very grounds which the Public Utilities Board would examine in determining what is a proper rate to be charged by Canadian Western for gas to be supplied to this consumer. Great emphasis is placed on the volume of consumption, upon the interruptable nature of the services to be given, and upon the high load factor, and other matters, all of which, in my respectful submission, are matters to be considered by the Utilities Board in determining a rate to be fixed by this public utility, Canadian Western, for this customer of its.

If a little thought be given to the situation, Sir, it will be seen that we will be led into a situation of the very greatest complexity and difficulty if this kind of an application can be made to your Board.

Argument re Jurisdiction.
by Mr. Steer.

- 9 -

Here is a consumer which says "We have got a high load factor, we use practically the same quantity of gas throughout the year, we use a large volume, we keep down the unit cost, and therefore gas that is supplied to us ought to be supplied from the field, not by our wholesaler, not by our public utility, gas that is supplied to us ought to be supplied from the field at a cheaper price." Let us go one step further and say that we have got a customer and one of the grounds, I should say, one of the grounds upon which that application is made is that if you do not supply us with this gas you would have to re-pressure and consequently you ought to charge us less because we are avoiding the necessity of re-pressuring. Let us go one step further, let us say "We have a consumer on our system, the Canadian Western system, that uses all its load in the summer time. If this application can success, Sir, I say to you that that customer can come in here to you and say "We ought to have still a lower price than Consolidated because all our gas is used in the summer when ^{it} avoids the necessity of re-pressuring." And that is only one instance. There are other industries, I presume, which have the same load factor and which are subject to interruption, and to which all of the considerations which are urged here apply, and if your Board is going to listen to this application, the likelihood is it will have to listen to hundreds of others, literally hundreds of others, who think that their conditions of user are such as to justify an application of that sort.

Now I say in the first place the application is obviously under 41, I say that no new evidence can be given and I say that so far as review is concerned, on

Argument re Jurisdiction
by Mr. Steer.

- 10 -

the evidence already given, that there is not any ground upon which the application can succeed.

Leaving that question to one side, however, and if I am wrong and if the Board wants to hear new evidence, and is willing to hear it, then I say that the application is really an appeal, it is asking for the application of a different set of principles than your Board has adopted in fixing these prices. Obviously, what your Board did was to say that wholesalers or any other person buying gas at the outlet of the Madison scrubber, were going to pay one price. Now, I quite conceive that you might, although this is a matter that has not been given consideration, I believe, I can see that you might fix different prices to different purchasers at the outlet of the Madison scrubber. We will leave that to one side. What you did was to fix a price at the outlet of the Madison scrubber to a public utility which was going to distribute that gas to its customers, and this applicant is one of its customers. Now then, the applicant comes along and says that principle is wrong. The applicant says you ought to consider large load, you ought to consider the volume of our supply, and you ought to consider all these other things in fixing the price that is going to be paid by our wholesaler Canadian Western, for our gas at the outlet of the scrubber. Now, I say it is virtually an appeal, but there are other appeals pending apparently. The Home Company has given notice of an appeal for which it wants leave, asking that you fix the well head price on a principle entirely different from that which was applied. Conceivably you might be directed that that was the proper leading approach. Suppose the Appeal Court were to listen to Home's appeal, and suppose the Appeal Court were

Argument re Jurisdiction
by Mr. Steer.

- 11 -

to direct you as a matter of law that the value of the gas to the consumer related conceivably to the comparative value of coal, and was the principle that you ought to apply, the well head price of this gas is going to be increased considerably. And where does that leave this application? It leaves it up in the air, and another application of this sort would have to be made, assuming that your Board has jurisdiction to listen to it, and I am going to submit with a good deal of confidence that you do not have jurisdiction to listen to it. There is the principle you have applied, there is the principle Home says ought to be applied, and we are informed that the Producers intend to support Home and probably launch their own appeal, and now comes this application which asks for the application of an entirely different principle.

The applicant admits in this submission that there is no hardship. Your Board has fixed these prices until 1948. There is no hardship going to occur, at least the applicant is going to suffer no hardship if this matter be allowed to stand and the whole question be reviewed when this situation comes up for review in 1948 or later. In fact, even if the application were to go on and conceivably the applic^{nt}abe t~~g~~ot all the leave that was necessary to supply its own gas, nothing could be done until 1948 in any event. But leaving all that to one side, it is obvious that the application must be made under Section 71(1) (f), and 72(c).

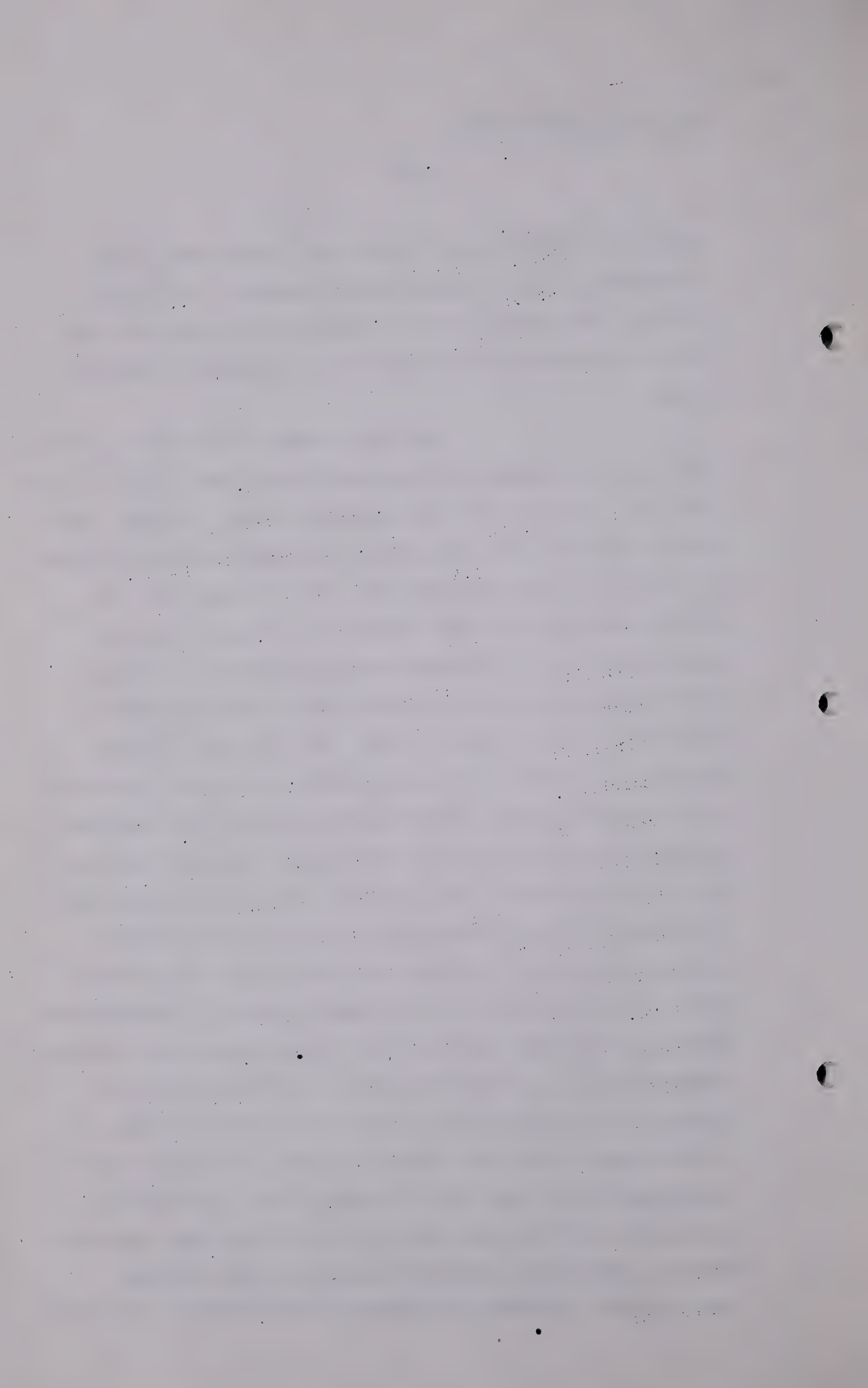
Under 71(1)(f), which Section is familiar to the Board, the Board may make an order to a public utility, being the proprietor of a well, the proprietor of a pipe line or the proprietor of a scrubbing plant, to do certain

Argument re Jurisdiction
by Mr. Steer.

- 12 -

things, to construct pipe lines, etc., to get the gas to an absorption plant, to get the gas scrubbed, and finally, to direct that public utility referred to in the first part of 71 to purchase and take delivery of the gas at certain prices.

Now then, under (f) the Board, having done all those things, has power to direct that public utility, the well, the pipe line, the scrubbing plant, to direct that public utility, "to sell the natural gas gathered and/or treated in accordance with paragraphs (a), (b), (c) and (d)", it directs the public utility "to sell at prices and in the quantities fixed by the Board to such wholesale or retail marketers and/or users of natural gas as the Board shall direct from time to time", where? At the outlet of the scrubber. Wherever it is being delivered, in this particular case it was the outlet of the Madison scrubber, but wherever it is being delivered by one of those public utilities referred to in the opening part of Paragraph 71. Then that is the place of delivery, "to such wholesale or retail marketers and/or users of natural gas as the Board shall direct from time to time." It is obvious, in my submission, that this application cannot be under that section. If it were, Consolidated would be asking that it be allowed to purchase from Madison at the outlet of the Madison scrubber, its requirements of gas, so it is not made under that Section, and the only other Section, in my submission, under which it can be made, is 72(1)(c), which gives the Board the power to fix the just and reasonable "price or prices to be paid for natural gas after it has been purified, scrubbed or otherwise treated for the extraction



Argument re Jurisdiction
by Mr. Steer.

- 13 -

or removal therefrom of sulphuretted hydrogen." Conceivably under those words, the Board could fix a price to an individual consumer who wanted to take delivery of gas at the outlet of the Madison scrubber. That is not this application. The just and reasonable price or prices to be paid for natural gas after it has been purified, scrubbed or otherwise treated for the extraction or removal therefrom of sulphuretted hydrogen or other deleterious substance," and this is what was done including the price to be paid for such purified natural gas by a proprietor of a public utility as defined by this Act or by the Public Utilities Act, purchasing the same for distribution to the ultimate consumer or otherwise. That, in my submission, Mr. Chairman, contemplates one price to a public utility and everything else after that point is dealt with by whatever Board has power to deal with rates as between that public utility and its customers. I say that the Board has power under that Section to fix one price and one price only to a consumer. Now it may be that you will have half a thousand applicants for gas at the outlet of the Madison scrubber to consider, and you can deal with every one of those on its own merits, but if you have got an application to fix a price for a customer you are not going to fix two or three prices, you are going to fix, in my respectful submission, one price.

I say that for these reasons the applicant cannot, as a matter of law, make this application. I say that the Board has no jurisdiction to entertain it, and I say that the application on that ground ought to be dismissed. But more than that, I have already mentioned this question of the possibility of other appeals, and the decision on those other appeals, if they were to be at all

B-1-8

Argument re Jurisdiction
by Mr. Steer.

- 14 -

contrary to the Board's decision, are bound to have an affect upon this application, and I suggest that it is a hardship on the other people who are interested in this application, it is a hardship on them to ask them to incur all the expense and time and trouble involved in the preparation of this application when the whole thing may have to be gone over again in a very short time.

(Go to Page 15)

... ..

... ..

... ..

Argument re jurisdiction.

By Mr. Steer:

- 15 -

Now that is one side of the picture. The other side of the picture is that the applicant says it is suffering no hardship and I note in the material supplied we have got no financial statement from this applicant. I would suggest that not only is it not suffering hardship but it is conducting a very profitable undertaking on 9 cent gas today and, further than that if there is any conceivable hardship and I submit on their own showing there is none, I say finally the proper place to deal with everything that is on this application which is before the Public Utilities Board in a contest between this customer and the supplier of gas, the Canadian Western, which could only be based on the ground of discrimination and if there is discrimination it is the Public Utilities Board in my respectful submission that has to deal with it.

MR. FENERTY: I wish to associate myself with all of the objections advanced by my friend Mr. Steer. No good purpose would be served by repeating any of them. A word or two I would like to add. I was interested in my friend Mr. Auxier's observation that he would not like to abandon any of the objections that he might later take and I conclude that an appeal from such Order may be made now or on the decision and that whatever happens here there can be no finality about this. It is an inquiry in the air.

Just by way of illustration of one of the points my friend made dealing with the Home appeal. I would like to give this illustration as indicating to me the complete futility of this Inquiry proceeding while the possibility of the Home appeal is before us.

I want to refer to one ground which Mr. Auxier says is a ground for reduction and no part of a cumulative series of grounds. If you will examine the notice in the brief that

Argument re Jurisdiction.
By Mr. Steer.

- 16 -

each of the grounds given is a reason given why there should be a reduction. You do not have to take the six grounds. Each ground my friend says entitles him to a sum to be reduced. I want to refer briefly to the futility of the proceedings. The Consolidated refers (c) the fact that the applicant uses gas as a raw material in a manufacturing process and is consequently unable to maintain any "stand-by" service for use in times of interruption of service.

Now we have three principles before us. The principle adopted by this Board as a common meeting place, the gate, the Canadian Western Gas under the same pressure and the same b.t.u. and heating value has the same value no matter how used is the principle I take it that the Board is proceeding on.

We have now in the Home that the true principle to be applied is the value to the consumer and we have the Consolidated suggesting in this motion that individual factors such as location, loads, etc., are those to be considered. Just let us think for a minute of one of the grounds the Consolidated keeps submitting that it has no stand-by because the gas is used in a manufacturing process. It becomes evident that if the Home succeeds, the ground that the Consolidated now advances for a reduction in price, becomes^{the} ground for an increase to all the customers of the Canadian Western because gas has more value to Consolidated as part of its manufacturing process. The others have stand-bys and can use coal. It is the only thing that the Consolidated can use so that the Home appeal may determine the effect of this ground.

MR. CHAMBERS: Mr. Chairman, on behalf of Madison and Royalite I desire to associate myself with the remarks of my friend Mr. Steer and I would like to preface my remarks by a very brief reference to what was said by Mr. Colls who was the

Argument re Jurisdiction.
By Mr. Chambers.

- 17 -

Manager of the Chemical and Fertilizer Division for the Consolidated Company, the present applicant, and who as such gave evidence at the Hearing pursuant to the notice as published and given to the distributors on the 24th day of April, 1946 and I merely quote this for the purpose of putting on record here that this applicant has had its day in Court along with the rest of us, and bear in mind that Mr. Colls made these remarks ten or eleven days after his Company had gotten the specific offer from the Dominion Government to buy this plant two days before they accepted it.

Towards the conclusion of Mr. Colls' evidence in Volume 81, page 6471, the question is asked him by Mr. McDonald in cross-examination:

"Q Well now is it your purpose in making this submission Mr. Colls, to suggest that the price of 7 cents be retained or are you making any recommendation ?

A We are not making any recommendation. We are only attempting to indicate the benefit of the continued operation to the area or the Province and in the wisdom of the Board they will so far as we know establish what is a reasonable price."

And then the question is also asked on Page 6472:

"Q How do you suggest the Board can arrive at a valuation of the gas that you use in your plant in establishing a price at the well head to the producer ?

A I cannot presume to guide the Board."

I merely, as I have stated, referred to that to show that this applicant has been before the Board on this Hearing and has made its representation and now it is seeking as I see it a re-hearing on new evidence and for the reasons indicated by my friend Mr. Steer I submit the Board has not power to hear the application, but aside from that I submit that the

Argument re Jurisdiction.

Mr. Chambers.

- 18 -

notice^{served} here for this application today and the materials accompanying it clearly indicate on its face that the matters complained of and that the remedies asked for^{are such} as can under the Statute be dealt with only by the Public Utilities Board. The only change so far as this applicant is concerned since he gave evidence on the 24th day of April is Order No. 10-871, dated January 2nd, 1947 of the Public Utilities Commissioners which changed the rate and the scale of charges being made by the Canadian Western to this applicant and I submit that the information that they give in their application and the remedy they asked for clearly show that the matter is not for this Board but for the Public Utilities Commissioners.

And I also desire to associate myself with what Mr. Steer said in regard to the confusion that is bound to ensue if this Board now deals with this application. In this application the applicant among other things suggests as an alternative what it can do with Home and we have in the other Hearing, Home is the one Company at the moment that is making application to the Board to increase the price that the Board has already fixed and aside altogether from whether the Home gets what they ask for, the matter of the procedure and the principles followed by your Board in the main hearing are bound to be dealt with by the Court of Appeal and it seems to me we are adding to the confusion for this Board now to proceed to hear this application and I desire very briefly to stress that on the wording of the Natural Gas Utilities Act there is no jurisdiction to hear this application and I refer particularly to Section 72-1(c) that Mr. Steer mentioned. I have another angle on it to stress to you sir. And, 72-1(c) says this, the Board has power to do certain things. One is to fix a just and reasonable price or prices to be paid for natural gas after it has been purified.

Argument re Jurisdiction.
Mr. Chambers.

- 19 -

Now under certain circumstances there could be different prices. And then it says including, and I submit to you these are important words, "including the price, not the "price" or "prices," but including the price to be paid for such purified natural gas by a proprietor of a Public Utility either under this Act or under the Public Utilities Act. And then Section 72-1(a) excludes the hydro-carbon content. Now the price or prices with the opening words of 71-1(c) clearly refers I submit when you read the whole Act to other prices that may be charged to different parts but the gas going to one Utility carries one price I submit. Other sections of the Act state that the well owner can get different prices for his gas but he gets one price for the gas going to the Public Utilities. Then under Section 72-1(d) and Section 72-2(d) he gets another price because there is a special provision for the Board doing it for conserved and re-pressured gas and then again the same Section allows different prices for the different parts of the field, but I submit there is nothing in the terms of this Statute to say that a well shall have one price for a certain quantity of his gas going to a public utility and another price for another quantity of gas going to that same public utility. And in conclusion I would merely like to say this, sir, that I am urging and I am asking that the Board should deal with this phase of this application first and make its decision as to whether or not it has jurisdiction because if it does decide it has jurisdiction, the attitude of the people that I represent so far as the Hearing is concerned would be considerably different and we intend to produce evidence. I mean if the Board is now going to reconsider it, the well head price of gas, on the basis of evidence that this party happens to bring, I submit

Argument re Jurisdiction.
By Mr. Chambers.

- 20 -

we are all entitled to the same consideration and I am seriously urging that the Board should decide this preliminary objection before we embark on the merits or the demerits of the application itself.

THE CHAIRMAN: What do you say about Section 41 Mr. Chambers ?

MR. STEER: I intended to make the same suggestion as my friend Mr. Chambers has made and I think the matter of the question of jurisdiction is of very great importance before you decide to take evidence.

MR. CHAMBERS: I associate myself exactly with Mr. Steer's remarks.

THE CHAIRMAN: Mr. McDonald ?

MR. McDONALD: I have nothing to add except to concur in what has been said by Mr. Steer and Mr. Chambers. I think they have covered the ground.

THE CHAIRMAN: Mr. Harrison ?

MR. HARRISON; On behalf of the British American and the British American Gas Utilities I am associating myself with Mr. Steer, Mr. Fenerty and Mr. Chambers, and I do not propose to add anything at this time.

THE CHAIRMAN: No friends Mr. Auxier.

MR. AUXIER: Apparently not.

THE CHAIRMAN: Well Mr. Auxier you have had a good deal of argument presented on the question of jurisdiction. You may not find yourself quite prepared to answer that at the moment.

MR. AUXIER: I have sir.

THE CHAIRMAN: I am prepared to adjourn for an hour to give you an opportunity if you wish it to consider what reply you make.

MR. AUXIER: I would appreciate that.

M-1-7

Argument re Jurisdiction
By Mr. Chambers.

- 21 -

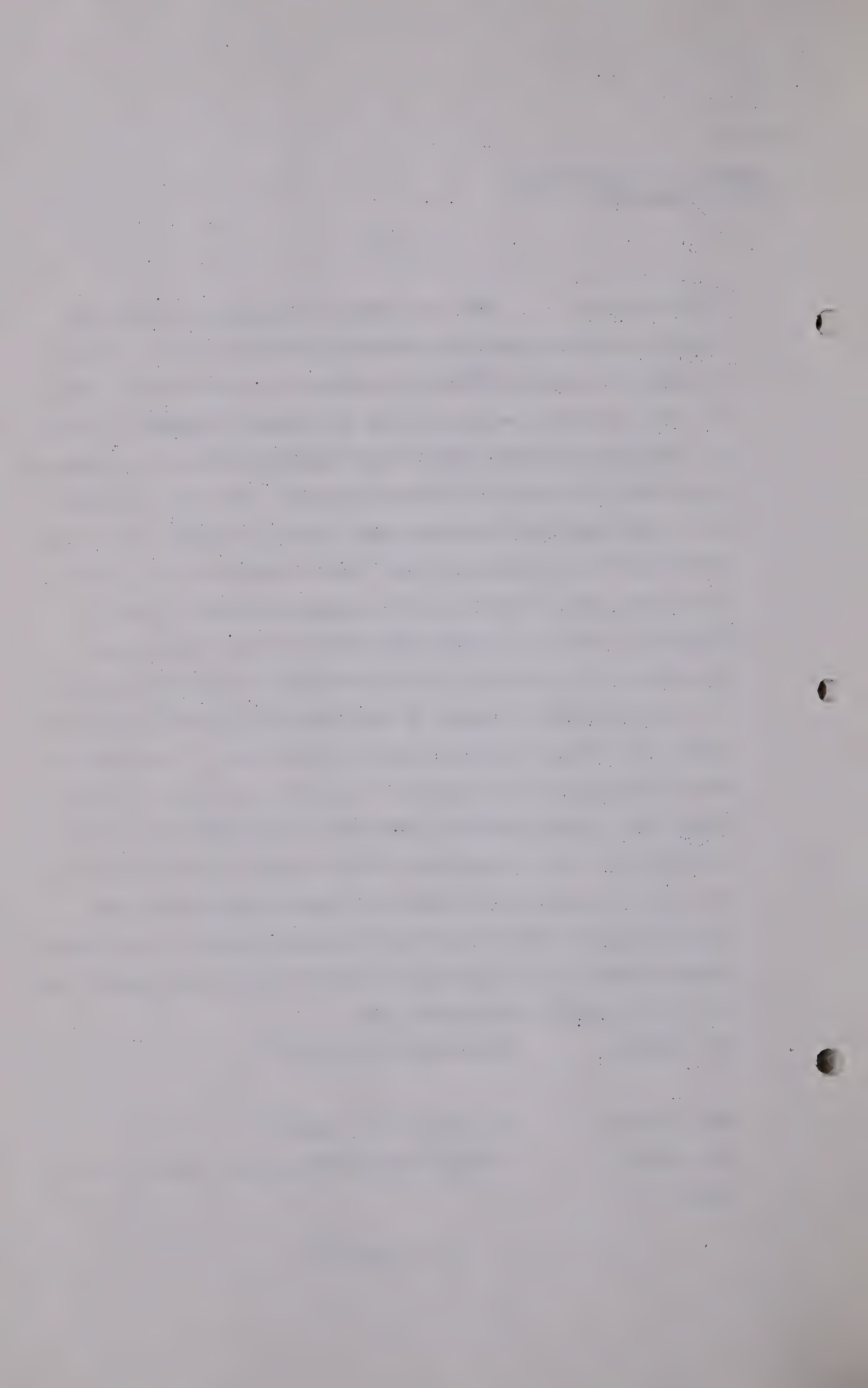
THE CHAIRMAN: Then Mr. Auxier I am going to make this suggestion to you too, or perhaps I should say first. I have thought of a number of ^{the} things mentioned by the Counsel. One of them naturally being the Home Oil Company's appeal. Now it is true that your application was launched before there was any suggestion of Home Oils taking an appeal. Now as I apprehend it if the Appellate Division grant leave to appeal and if they decide that on a matter of law I have mis-applied the evidence then they send it back to me for reconsideration. Now if I had heard evidence on your application without giving any decision on the question of jurisdiction we might find ourselves in a very awkward position if the Appellate Division should say that I was wrong in my application of the law. I am going to make this suggestion to you. If you wish to leave it to the Board only to deal with the question of jurisdiction I will undertake to have my decision out by the end of this week and you can then argue the question of jurisdiction before the Court of Appeal before the Home Oil appeal comes up and thereby perhaps save all the expense of three or four days hearing now. So that you might think about that.

MR. AUXIER: Yes I will do so sir.

THE CHAIRMAN: How long do you want ?

MR. AUXIER: I would think perhaps a few minutes after eleven.

(Go to Page 22)



T-2-1 11.05 a.m.

Argument re Jurisdiction
by Mr. Auxier.

- 22 -

MR. AUXIER: Mr. Chairman, before I proceed with the argument there is another schedule which I intended to ask leave to submit, before the Argument on Jurisdiction came up. I wanted to get it into the hands of the various people interested at the earliest possible moment. Perhaps I should put that in now. It is a schedule showing the breakdown of demand costs on the Madison system so far as our load is concerned.

THE CHAIRMAN: That complete submission, Mr. Auxier, will be marked as Exhibit 1?

MR. AUXIER: Yes.

THE CHAIRMAN: Even although it has not been formally presented through a witness?

MR. AUXIER: Yes. Now with respect to the application to dismiss this motion, I would like to deal first with Mr. Chambers' suggestion that we have had our day in court and consequently are not entitled now to be heard. The position is this, and I intend if given the opportunity to establish it by evidence, first that as the applicant did not own the plant, the Alberta Nitrogen Plant, until May 1st, 1946 - that was the date that the operations were officially transferred by the Dominion Government to the Consolidated Mining and Smelting - that was some time after all the evidence had been heard. The subsidiary corporation, the Alberta Nitrogen Products Limited, had early in the hearing contemplated taking some part therein, but had been requested by the Dominion Government, the owners of the Plant, to refrain from doing so. They had been directed not to take any part in it. Presumably the present applicants could, through its officers who were also officers of Alberta Nitrogen, have taken part in it and have furnished certain information to you at that time. During the

T-2-2

Argument re Jurisdiction
by Mr. Auxier.

- 23 -

entire progress of your Hearing, the information which those officers possessed was possessed only as officers of Alberta Nitrogen. It was confidential information which they had no right to disclose unless given leave to do so by the Crown, the owners of the plant. They could not have given very much information to the Board under those circumstances in view of the request by the Dominion that they not take part. In any event it is true of course they could come in, following the Hearing and could have asked to be heard after they became the owners of the plant and they perhaps might and perhaps they should have done that. But I cannot see that anyone is prejudiced now by their failure to do so. Had they come in and taken part they would have undoubtedly argued such questions as the construction of the Madison rate base, the rate of return, whether or not income tax should be allowed and all those various things that were argued by other parties to the proceedings. But as far as your decision is concerned in its major aspects they are not even now attacking it. I cannot see that there is any prejudice to any person. There might have been had they been in a position to come in in the early stages but they could not come in and I do not see that any person is hurt. I do not think that they should now be barred on that account.

THE CHAIRMAN: What about the suggestion that there should be some finality to the proceedings?

MR. AUXIER: The history as far as I have been able to trace it of Public Utility Regulation would indicate it is not very often the case, sir. I realize the objection that might be made on that account. The applicant feels that it does stand alone on the Canadian Western system. There is no other consumer with

Argument re Jurisdiction
by Mr. Auxier.

- 24 -

anything like the volume or the load factor. There may be other groups. If you feel you have jurisdiction to set not one price but several prices at the gate then there may be other groups that are entitled to be considered. I do not think the problem is anything like my friend Mr. Steer attempted to make it. There are only a few consumers who would be affected.

THE CHAIRMAN: On the question of the day in Court, Mr. Auxier. I think that I, myself, invited Mr. Colls to discuss the price of gas but he declined very pleasantly to do so. He was asked a specific question by myself on that point.

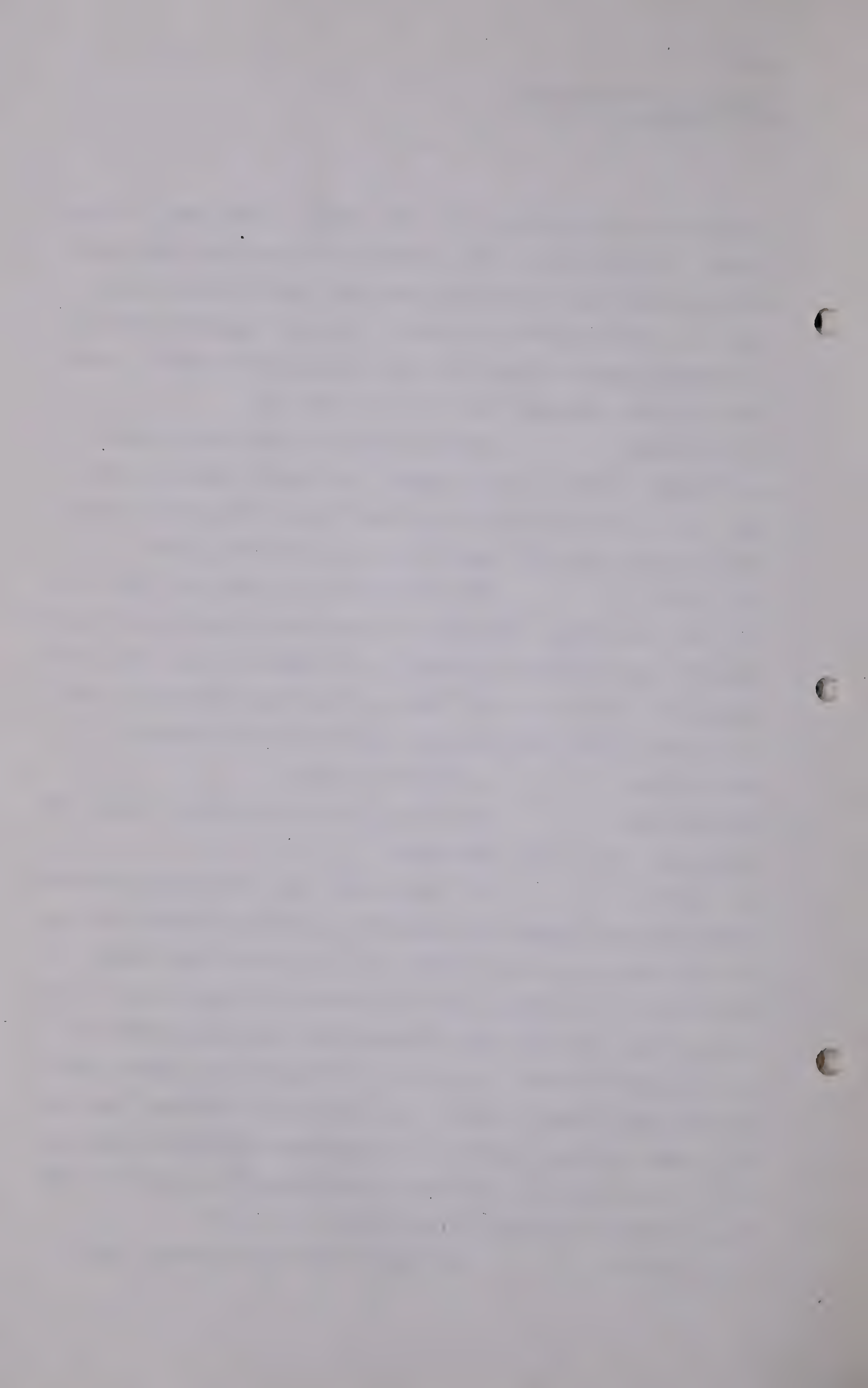
MR. AUXIER: That is true but Mr. Colls at that time - I do not know if Mr. Colls knew at the time he gave his submission that the plant had been offered to his company or not. His submission was dated May 11th, which was two days before the letter was written by the Department of Construction and Supply.

THE CHAIRMAN: April, was it not?

MR. CHAMBERS: He did say he was there as a prospective purchaser. That is on the record.

MR. AUXIER: Of course they have throughout considered themselves as prospective purchasers and that presumably was one of their main reasons for taking part in this at the outset. I think you, Mr. Chairman, would have been quite within your rights to tell them, had they taken a great part in these proceedings and having no interest other than a letter that the plant might some day be offered to them - or a term in the contract that they could some day have bought it - I think you would have been well within your rights had you ruled that they had no status to come in and discuss gas rates. "You have no interest."

THE CHAIRMAN: You have no idea how generous I am in



Argument re Jurisdiction
by Mr. Auxier.

- 25 -

listening to what turn out to be irrelevencies simply because this is an administrative Board and I am very vulnerable when I come to the Appellate Division.

MR. AUXIER: They could not certainly have given you very much help with regard to the future plans of this undertaking when they did not know whether they would ever own it or not. I think it would have been presumptuous of them to do so. But in any event, whatever the position is, I say that no one has been prejudiced by it because the bulk of the work done, the bulk of the evidence and your decision in the main deal with things which we are not now proposing to attack.

On the other points I will deal first with Section 41 of the Natural Gas Utilities Act which says the Board may rehear an application before deciding it. Well you have decided it. You are not rehearing it. We are not asking you to rehear it. We are asking you to hear some additional evidence, evidence which was not, at least in the main, was not before your Board on the initial application. Your Board may review, rescind, change, alter or vary any decision or Order made by it. I am submitting that that does not limit the applicant to a point of law only. That you can hear additional evidence and on the basis of that evidence may vary your decision. I do not think there is anything in that Section or elsewhere in the Act that would bar the receipt of additional evidence. That is not necessarily a rehearing of the original matter. As I have pointed out, we are not proposing to attack in any way the various prices as average prices. We say, however, that they should not be uniform prices, that there should be prices for different groups of customers. In other words the same factors which warrant differentials in prices on an appli-

—

Argument re Jurisdiction
by Mr. Auxier.

- 26 -

ation before a Public Utility Board are equally applicable to fixing the price for services rendered up to the gate and that the price or prices should be fixed on ordinary application of Public Utility principles.

THE CHAIRMAN: Could it be said that the word "review" could be limited to a re-argument on that evidence which is before the Board; which someone might suggest that the Board has misconceived the weight or the value or the application of the evidence and that there could be a review to that extent followed by a variation of the Order or Decision. I am frankly looking for light, Mr. Auxier, and not arguing with you.

MR. AUXIER: The word "review" would encompass that but I do not think it is necessarily limited to that.

MR. STEER: What is the difference between rehearing and a review is the question I was going to ask? That is what we have got to decide.

MR. AUXIER: A rehearing is quite clear. It means calling all the evidence over again.

MR. STEER: And such additional evidence as the Court sees fit to introduce.

MR. AUXIER: A review would not contemplate the rehearing of all the evidence submitted in the first instance but would, I submit, not necessarily bar the submission of additional evidence.

THE CHAIRMAN: Have you looked for any law on the point, Mr. Auxier?

MR. AUXIER: I have not, sir, on this question. And I doubt whether there is very much, on the meaning of the word "rehear".

1. The first part of the paper is devoted to a discussion of the

2. The second part of the paper is devoted to a discussion of the

3. The third part of the paper is devoted to a discussion of the

4. The fourth part of the paper is devoted to a discussion of the

5. The fifth part of the paper is devoted to a discussion of the

6. The sixth part of the paper is devoted to a discussion of the

7. The seventh part of the paper is devoted to a discussion of the

8. The eighth part of the paper is devoted to a discussion of the

9. The ninth part of the paper is devoted to a discussion of the

10. The tenth part of the paper is devoted to a discussion of the

11. The eleventh part of the paper is devoted to a discussion of the

12. The twelfth part of the paper is devoted to a discussion of the

13. The thirteenth part of the paper is devoted to a discussion of the

14. The fourteenth part of the paper is devoted to a discussion of the

15. The fifteenth part of the paper is devoted to a discussion of the

16. The sixteenth part of the paper is devoted to a discussion of the

17. The seventeenth part of the paper is devoted to a discussion of the

18. The eighteenth part of the paper is devoted to a discussion of the

19. The nineteenth part of the paper is devoted to a discussion of the

20. The twentieth part of the paper is devoted to a discussion of the

21. The twenty-first part of the paper is devoted to a discussion of the

22. The twenty-second part of the paper is devoted to a discussion of the

23. The twenty-third part of the paper is devoted to a discussion of the

24. The twenty-fourth part of the paper is devoted to a discussion of the

25. The twenty-fifth part of the paper is devoted to a discussion of the

26. The twenty-sixth part of the paper is devoted to a discussion of the

27. The twenty-seventh part of the paper is devoted to a discussion of the

28. The twenty-eighth part of the paper is devoted to a discussion of the

29. The twenty-ninth part of the paper is devoted to a discussion of the

30. The thirtieth part of the paper is devoted to a discussion of the

31. The thirty-first part of the paper is devoted to a discussion of the

32. The thirty-second part of the paper is devoted to a discussion of the

33. The thirty-third part of the paper is devoted to a discussion of the

34. The thirty-fourth part of the paper is devoted to a discussion of the

35. The thirty-fifth part of the paper is devoted to a discussion of the

Argument re Jurisdiction
by Mr. Auxier.

- 27 -

MR. STEER: I have searched and I cannot find a
discussion on it.

MR. AUXIER: I submit that the entire Act is intended
to give you the widest possible power to deal with all matters
pertaining to public utilities.

THE CHAIRMAN: Can it be said that since the Public
Utilities Act or the Natural Gas Utilities Act place restrictions
on individual rights, that is by regulating the prices they can
charge, can it be said then that the Statutes should be construed
strictly?

MR. AUXIER: Well of course it depends on what you mean
by a strict construction of these Statutes. I would think it
would be - -

THE CHAIRMAN: I am thinking of the word "review".
Should it be limited to its primary meaning, that is to go over
that which you already have and perhaps reach a different con-
clusion?

MR. AUXIER: Of course you are reviewing your decision.
A review, I agree, would normally probably mean simply going
over the evidence that is already before you. But that is not
all you may do. You may review, you may rescind, you may change,
alter or vary. I submit these things are necessarily as a
result of the review.

THE CHAIRMAN: Are those disjunctive or conjunctive?

MR. AUXIER: I would say they are disjunctive. You
may review, rescind, alter or vary.

THE CHAIRMAN: And those words are practically synonymous
are they not?

MR. AUXIER: You can review without changing and you
can change without reviewing. On the basis of Section 41, I

T-2-7

Argument be Jurisdiction
by Mr. Auxier.

- 28 -

submit, sir, there is no restriction placed on you. After all this is an administrative discretion that you are exercising under this Act. You may get information wherever you like.

THE CHAIRMAN: Mr. Chambers does not agree with that. He said Mr. Justice Smith is wrong. I think it is Mr. Justice Smith who virtually said I could send out my secretary on the street corner to get information and he could bring that back to me and I could act on it. The other members of the Court thought perhaps he went a little too far without expressly saying he was wrong.

MR. AUXIER: Well perhaps there is some restriction. You are bound, probably, to hear evidence after notice to other parties but I cannot see there is any restriction on your getting as much evidence as it is possible for you to obtain before exercising any of your functions. And I submit the wide word in Section 41 could have no interpretation other than that in view of the very wide powers given you with regard to the regulation of public utilities. And that you should not be hampered even by a judgment already given by you in the event that something else comes to your notice and as long as all parties are notified and as long as all the usual things that in matters of administrative procedure are complied with, I cannot see any limitation on your powers.

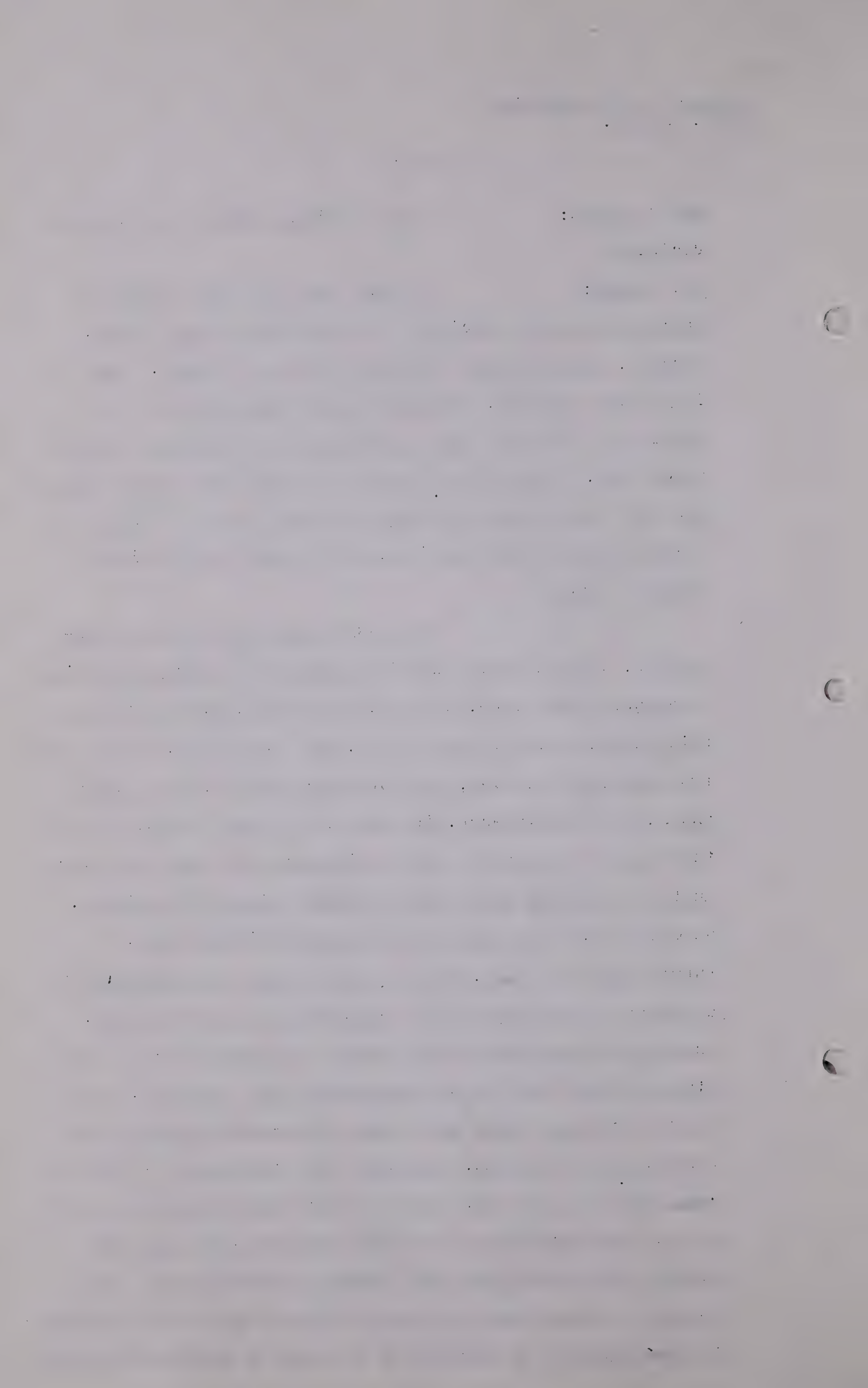
Argument re Jurisdiction
by Mr. Auxier.

- 29 -

THE CHAIRMAN: Can I re-hear after I have given a decision?

MR. AUXIER: It says here you can re-hear an application before deciding it, and that you may review, rescind, alter or vary any Order after it is made. Now if you were limited, if there was any intention that you should be limited in your reviewing to the evidence already before you, I think that is something that the Statute should have set out expressly if there was any intent of that kind I submit the section was intended to give you the widest possible powers.

Now with regard to the other discussion, I can realize the difficulties in the way of having a variable gate price, but in view of the fact that this is being administered by two Boards, and that there are at least two companies involved, one furnishing part of the service and another the balance, it seems to me that it would be on the face of it wrong to have an ironclad rule that one price must be a uniform price and the other price only variable, unless it was very clear in the Public Utilities Act. I submit that it is not, that you can direct the proprietor of a public utility to sell his commodity at less than cost. Assuming the gate were right within one hundred feet of the Nitrogen Plant and the Gas Company had two customers, they had the Nitrogen Plant and a small four-roomed shack on the other side of the road, the plant were consuming 9 million cubic feet of gas a day and the other chap not more than 100 or so, and there are only the two customers, the gate was within one hundred feet. The services rendered by the Gas Company consisted only in taking delivery there and furnishing the two houses. It seems to me it would be an absurd proposi-



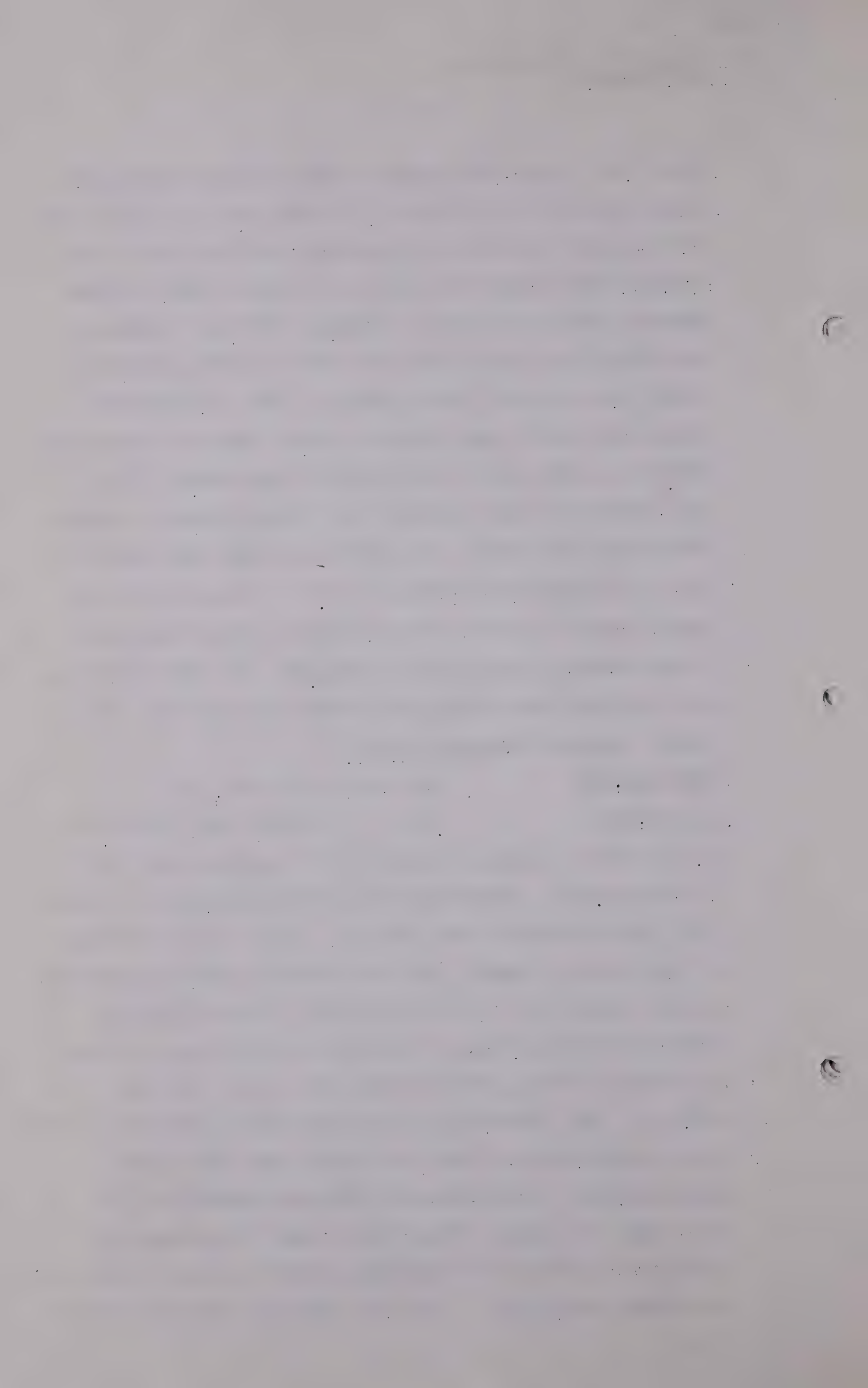
Argument re Jurisdiction
by Mr. Auxier.

- 30 -

tion, Sir, to say with regard to the people furnishing 99% of the services, your rate is a uniform rate, and to say to us "Any relief that you must look for must come out of the margin," which would be bound to be small in those circumstances, received by the Gas Company. That is, of course, stretching the facts in this case but still the principle is the same, that if you are bound to set a uniform rate at the delivery to that utility company, then you cannot give effect to public utility principles to any extent. It is well-recognized that a person with a large volume, a person with a high load factor, and matters of that kind should be given consideration in fixing the rate. I submit that that applies equally to the services rendered above the gate as to the services rendered below the gate, and that the fixing of a uniform price at the gate simply takes this out of the field, prevents the application.....

THE CHAIRMAN: Any limitation under 71?

MR. AUXIER: Yes. I submit that Section 71, or 72, was not intended to mean that a uniform price only can be charged. Perhaps whoever drafted this section originally did not think of the question because he was looking at the average consumer, and there would be ample opportunity in the average case to give due credit to such things as load factors and so on, in the portion of the money received by Canadian Western, but I submit that is not the case with us. The Section throughout deals with just and reasonable price or prices to be paid for natural gas after it has been purified. It contemplates there the possibility of more than one price. It goes on to say, "including the price to be paid for such purified natural gas by a proprietor of a public utility." That is simply an inclusion clause



Argument re Jurisdiction
by Mr. Auxier.

- 31 -

to show that the public utility's position in taking delivery of the gas is included. But I submit that the use of the word "price" and the failure to repeat "price or prices" there has no bearing on the initial part of the section which gives the Board its powers, and that is to fix "just or reasonable price or prices".

THE CHAIRMAN: Yet in another part of the Act the Board is given power to fix different prices in different parts of the field. It says so specifically. It does not say so here.

MR. AUXIER: No, it does not say so specifically, but I submit it is the opening words of the subsection that really settles your powers and the other is, the last words of the Section dealing with the position of a public utility are simply added in so that there can be no doubt that their position can also be considered by your Board.

Section 50, in any event, I submit, is wide enough to cover the circumstances of this case. "The Board, either upon its own initiative or upon complaint in writing," - I submit our Notice of Motion can be termed a complaint, - "shall have power by order in writing made, after notice to and hearing of the parties interested, -

(a) to fix just and reasonable rates, charges, or schedules thereof which shall be imposed, observed and followed thereafter by any proprietor;"

Ma ison is a proprietor. The word "rates" rather than "rate" "charges" rather than "charge" are used in that section, and I submit there is ample power in that section, apart entirely from Section 72, for you to do as we have requested you to do.

Argument re Jurisdiction
by Mr. Auxier.

- 32 -

THE CHAIRMAN: That is "fix just and reasonable rates" must be limited to rates I have power to fix by some other part of the statute?

MR. AUXIER: I think it should be interpreted....

THE CHAIRMAN: I am only exploring, Mr. Auxier.

MR. AUXIER: Oh quite. I can well appreciate your problem here, but on the face of it I submit it could not have been the intention of the Legislature to prevent the application of public utility principles in fixing rates under an Act which is a public utility regulatory Act, and that is exactly what would happen if the interpretation contended for by my friend, Mr. Steer, of Section 72(c) is accepted. It prevents the application of public utility principles, the very intention, obvious intention behind the passage of the Act. We have sections scattered throughout the Act giving the Board wide powers, there is a great deal of overlapping, but I submit that Section 50, apart entirely from Section 72, does give you jurisdiction, and I say Section 72 amplifies it.

If you feel that you must give effect to Mr. Steer's argument with respect to Section 72, then I would ask that you accept our notice or allow us to amend our notice to ask under Section 71 that the Madison Company sell to us gas at the gate.

THE CHAIRMAN: You are not a public utility.

MR. AUXIER: Pardon me?

THE CHAIRMAN: You are not a public utility.

MR. AUXIER: We are not a public utility. I would like to make that in the form of an alternate motion.

MR. CHAMBERS: You are not suggesting to go on with

Argument re Jurisdiction
by Mr.Auxier.

- 33 -

that part of the application now, are you?

MR. AUXIER: No, I am saying the facts I intend to prove would be reasonably applicable to one application or the other.

MR. CHAMBERS: If the Board is going into that, I can think of several other people who want to make similar applications.

MR. AUXIER: I do not think we should be driven to that, but if the interpretation of Section 72 contended for by my learned friends, Mr. Steer and Mr. Chambers, is sound, then that is our only alternative, to buy our own gas and ask Mr. Steer's company to transport it for us.

THE CHAIRMAN: And then if everyone else would do the same thing, then the Gas Company would be reduced to the status of a common carrier, and we would have the same diversity of opinion as to what the charges should be.

MR. AUXIER: I imagine Mr. Steer's company is a common carrier under the Act.

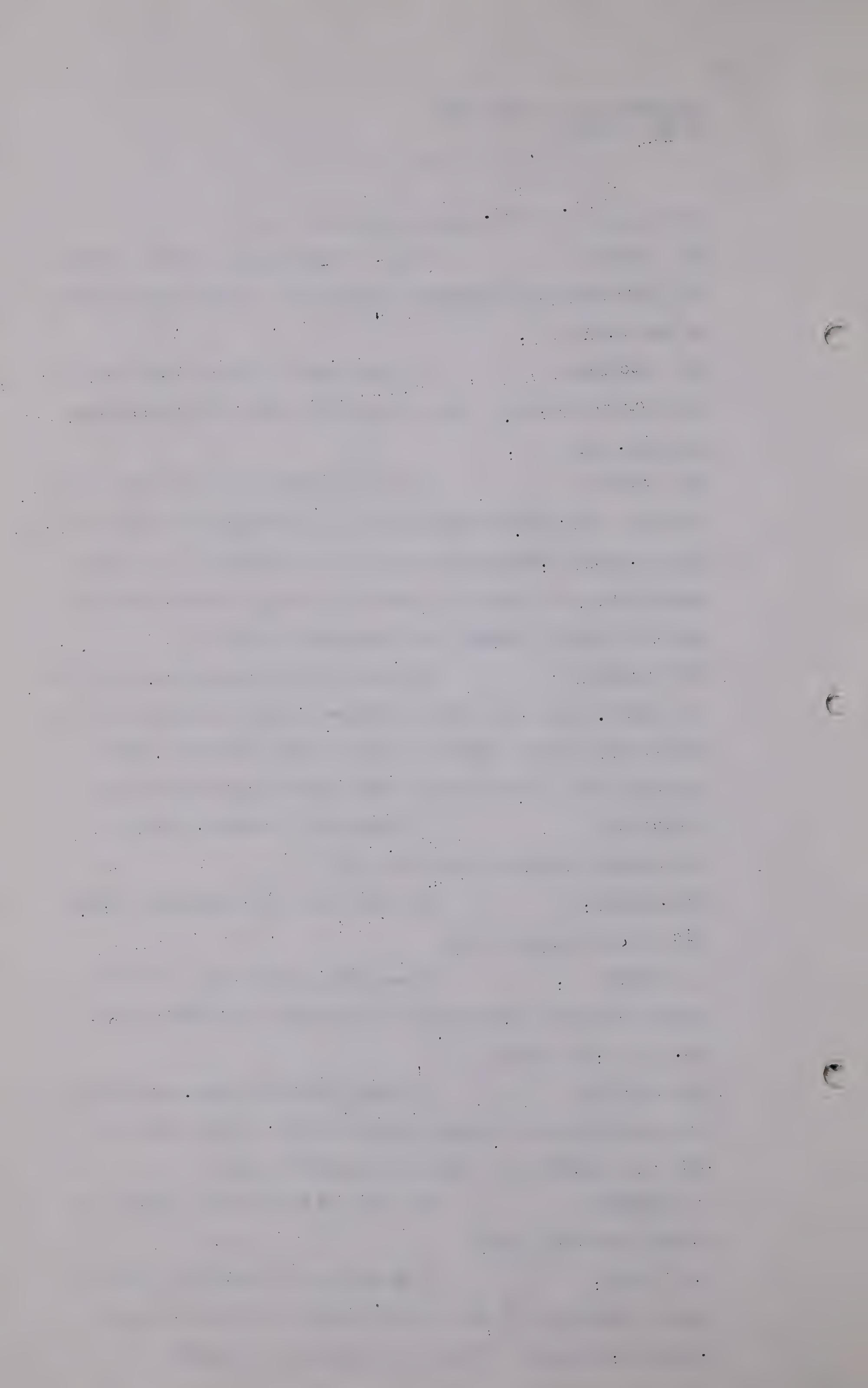
THE CHAIRMAN: If they have the capacity to take some other people's gas.

MR. STEER: I would not admit that. I think we are outside of Section 74 altogether, at least I am going to argue that.

THE CHAIRMAN: I think under the main sections of the Act you might be a common carrier to the extent that you have the capacity to take other people's gas?

MR. FENERTY: You are asking if you cannot buy at the Madison's gate?

MR. AUXIER: I am asking if the Board finds it has no jurisdiction on our application to vary the gate price at the gate. There is a price at the gate.



Argument re Jurisdiction,
by Mr. Auxier.

- 34 -

MR. FENERTY: Rather throwing the whole deal
overboard, are you?

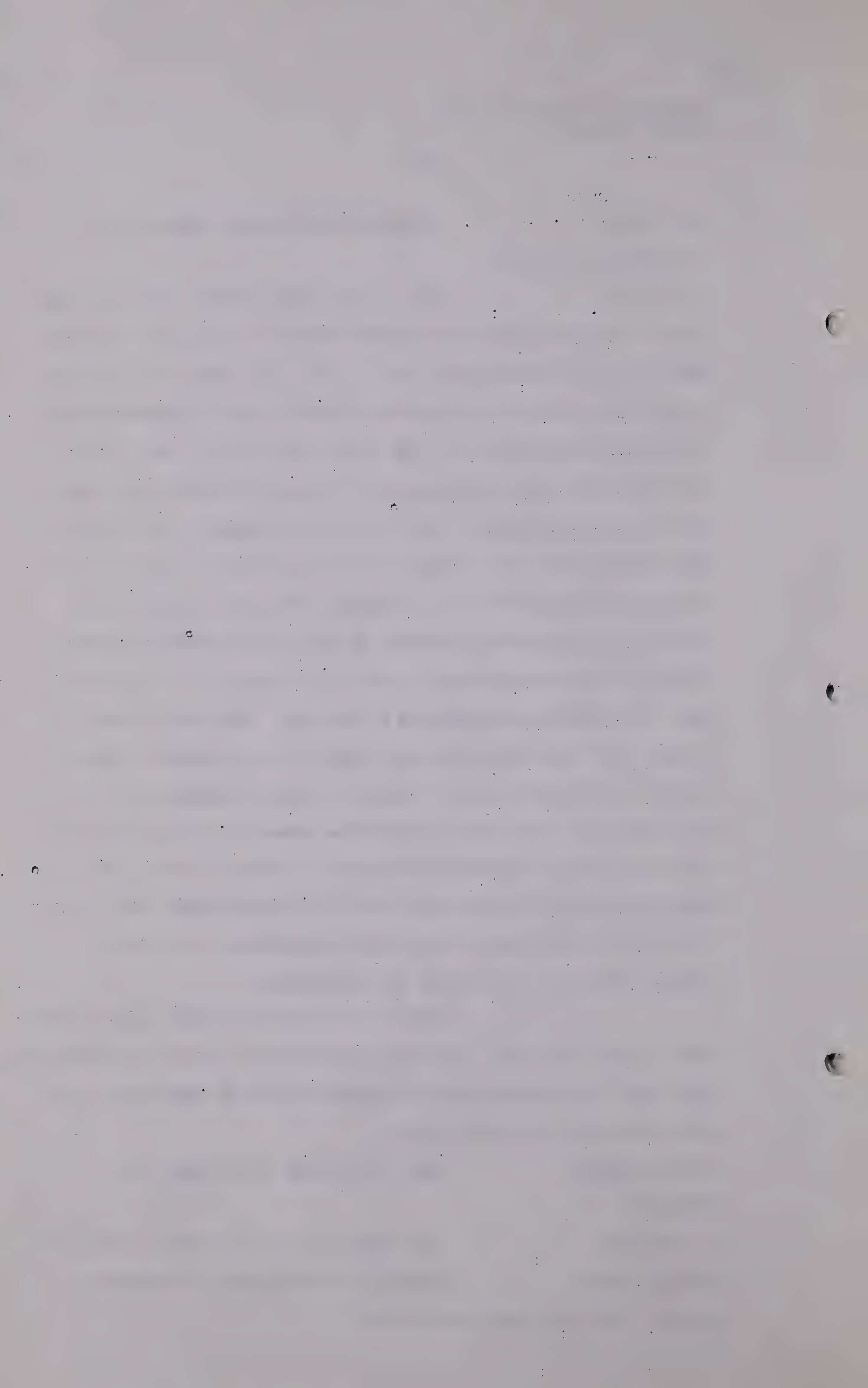
MR. AUXIER: No. To be quite frank with you, all
we are concerned about is a lower price for gas, and how and
where we get it we do not care. We do not want to if it can
be avoided, we have no desire to build a pipe line when the
facilities are already in the field, but we say the deal we
can make with Home to supply our own gas delimits the price
which we should pay for gas to the Gas Company. Now if the
Gas Company will sell us gas, if 9 cents can be taken as an
average price and the Gas Company will sell us gas at a
price which takes into account all the factors which we say
should be considered from the well to the point of delivery,
that is perfectly satisfactory with us. We feel at the
moment that the Public Utility Board is not standing alone,
has not jurisdiction to do that, and that consequently we
must ask that those facts should be taken into account in the
price charged by Madison to Canadian Western at the gate,
because there is not enough room in the additional cost from
the gate to the plant to give full consideration to the
factors which we say should be considered.

Now I would like at this stage to ask
that if, and only if, the Board considers it has no jurisdiction,
then that our application be considered as an application to
fix a price to us at the gate.

THE CHAIRMAN: And you become a customer of
Madison?

MR. AUXIER: And we become a customer of Madison.

THE CHAIRMAN: Using the facilities of Canadian
Western for your transportation?



Argument re Jurisdiction,
by Mr. Auxier.

- 35 -

MR. AUXIER: Then e would ask that our gas be transported by Canadian Western.

MR. STEER: That is an application, of course, which cannot be made without formal notice on the grounds stated. I suppose if the Board chooses to do so, they would simply give my learned friend an opportunity to do that.

MR. AUXIER: I do not ask to submit any other additional grounds than those already before the Board on this application. No person is being taken by surprise in that.

MR. STEER: I am. I am. I am taken by surprise that such an application should be made.

MR. AUXIER: I am asking it simply as an alternative, as I pointed out, but I submit, with all the vigour at my command, that your Board is not limited as my learned friend, Mr. Steer, contends, and that you have the power to vary, to set not one but several prices for gas at the gate if the circumstances warrant it because otherwise, I submit, you are automatically prevented from giving application to all public utility principles involved in fixing rates, except the matter of the rate base and the return to be allowed.

THE CHAIRMAN: That is more a question of the merits of the application rather than the question of jurisdiction.

MR. AUXIER: It is, but I submit that the Legislature could not have intended such an absurd situation to arise under a regulatory Act, and that as a consequence of that, that is an item which must be considered when interpreting . . Section 72(c).

THE CHAIRMAN: Intention by the language in which the Statute is expressed?

Argument re Jurisdiction
by Mr. Auxier.

- 36 -

THE CHAIRMAN: Intention by the language in which
the Statute is expressed?

MR. AUXIER: Not only the language of that section,
you are entitled, Sir, to consider the entire Statute in
arriving at what that intention is.

THE CHAIRMAN: Regardless of that, the intention
was twofold, or perhaps threefold, (1) conservation, (2) a
just price to the producer in the field, and (3) sharing of
the market previously denied many producers.

MR. AUXIER: And (4)?

THE CHAIRMAN: A just and reasonable price.

MR. AUXIER: A price that is just and reasonable
to the person consuming the gas.

There are various sections in here.
Take Section 50: "The Board, either upon its own initiative
or upon complaint in writing, shall have power by order in
writing made, after notice to and hearing of the parties
interested,-

(a) To fix just and reasonable rates, charges, or
schedules thereof which shall be imposed, observed
and followed thereafter by any proprietor;"

I submit that gives the power to consider the position of
the person buying gas as well as the person selling it.

MR CHAMBERS: That is the point, Canadian Western
are the only ones buying from us.

MR. STEER: You were talking about consumers.

MR. AUXIER: There is, I say, in here Section
71 that has been referred to to provide for sale at the
gate to consumers. The whole difficulty has come about through
there being two Acts instead of one for the determination of
this problem, but I submit that the Acts must really be read

Argument of Jurisdiction,
by Mr. Auxier.

- 37 -

together. The Public Utility Act is referred to frequently therein. It is an Act passed for a specific purpose, but I submit that just because one company delivers the gas and another company transports it, that you are not thereby precluded from considering all the factors in determining as to what price the initial supplier should receive. And as a matter of fact historically you have the situation here where this plant that is now before the Board, Royalite sold gas to Canadian Western at two different prices. They sold at $7\frac{3}{4}$ cents for transmission to the general market, and 5.4 cents as transmission to us.

MR. STEER: As a war measure.

MR. AUXIER: I do not know. I know Mr. Stevens-Guille is not as determined as Mr. Steer on that being a war measure. He does not say in his evidence it was a price fixed for purely patriotic reasons.

MR. STEER: We will.

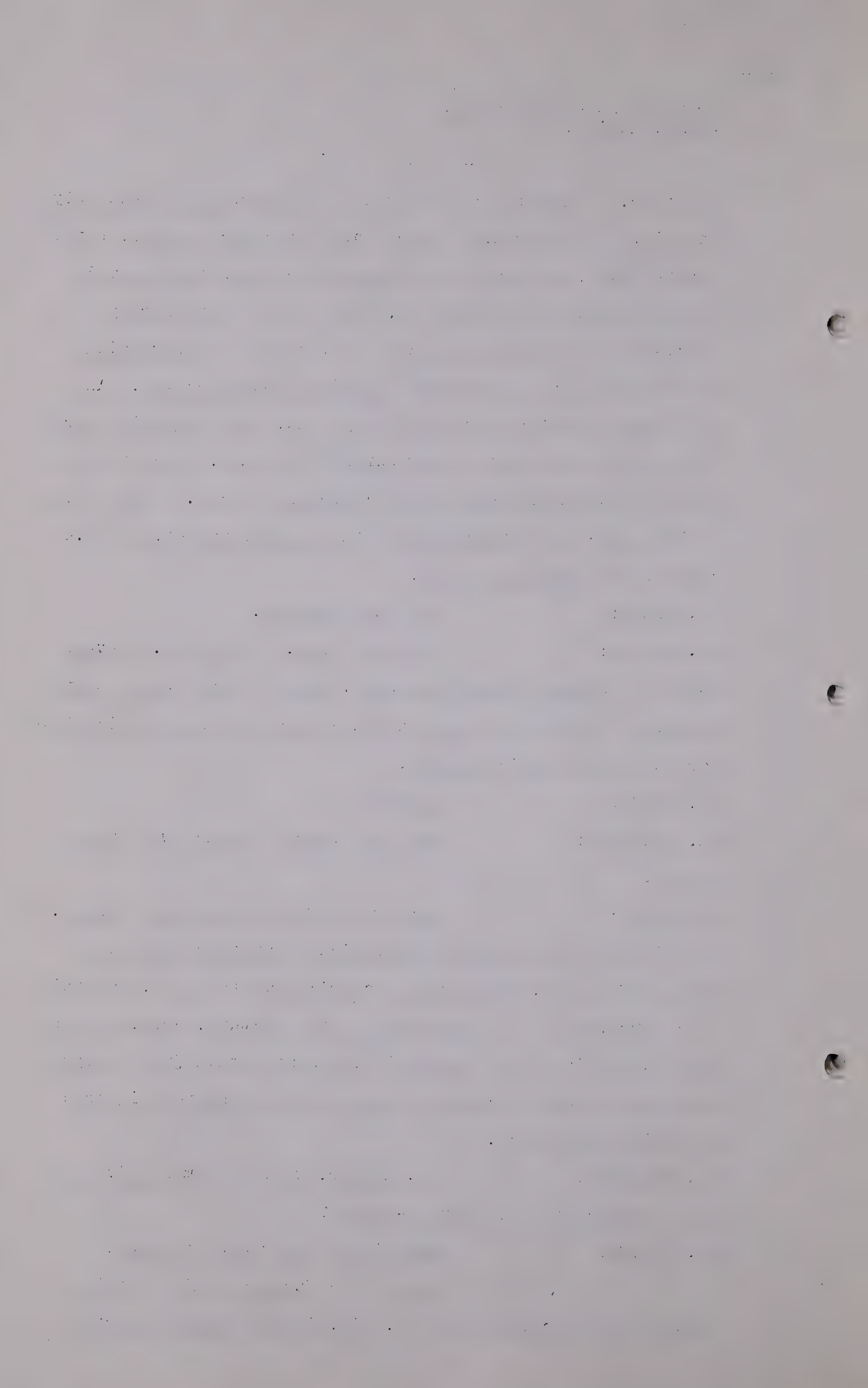
MR. CHAMBERS: That was before the Act was passed anyway.

MR. AUXIER: That was before the Act was passed, that is true, but if it is historical that there were as a matter of record, there were two prices at the gate, and this price arrived at, even with war in the picture, arrived at by open bargaining, and I think it takes more than just a sayso that such things as costs and so on were completely ignored in fixing that price.

MR. CHAMBERS: Mr. Auxier, would you mind giving me the reference to Mr. Stevens-Guille?

MR. AUXIER: That is at pages 3450 to 3452.

There is a judgment which I think I may be able to find for you, Sir, in the Supreme Court of



Argument re Jurisdiction
by Mr. Auxier.

- 38 -

the United States in which Mr. Justice Holmes, and I think Mr. Justice Brandeis approving, said something to the effect that an administrative officer in exercising or fulfilling an administrative function, was not limited even strictly to the evidence, and in arriving at his decision, that the whole history of human experience, some words to that effect, were available to him. I think I can find that for you, Sir, if you would like to have it. Unless you are expressly forbidden by the Act to take into account, to differentiate in your prices at the gate, I submit that you have full right to hear anything that you may wish to hear put before you on proper notice to the parties concerned, and that you may act on it as in your judgment seems proper, and I submit that the words of Section 72 won't fall far short of preventing you from doing it.

(Go to page 39)

1. The first part of the document discusses the importance of maintaining accurate records of all transactions. It emphasizes that proper record-keeping is essential for the transparency and accountability of the organization. This section also outlines the various methods used to collect and analyze data, ensuring that the information is reliable and up-to-date.

2. The second part of the document focuses on the implementation of the proposed changes. It details the steps involved in the transition process, from the initial planning phase to the final execution. This section also addresses the potential challenges that may arise during the implementation and provides strategies to overcome them.

3. The third part of the document discusses the expected outcomes of the proposed changes. It highlights the benefits that the organization will realize, such as improved efficiency, reduced costs, and enhanced customer satisfaction. This section also provides a timeline for the implementation of the changes, allowing stakeholders to plan accordingly.

4. The fourth part of the document provides a summary of the key findings and conclusions. It reiterates the importance of the proposed changes and the need for continued monitoring and evaluation. This section also provides a final recommendation, suggesting that the organization proceed with the implementation of the proposed changes.

Argument re Jurisdiction,
by Mr. Auxier.

- 39 -

My friend Mr. Chambers mentioned the fact that your decision contemplated a review within the next year or two and that this matter should be let stand, our application should be let stand until then at any rate, but the difficulty I have set in the brief and I repeat again I am not saying we cannot meet the price, we can meet the price in Rate No. 6 and make a profit but we cannot plan ahead. The conditions that exist at present are artificial. There is a world wide demand for production which demand came up suddenly through the bombing and destruction of nitrate plants in Europe. There was a back log of fertilizers required due to the manufacture of munitions during the war and those conditions won't last. It is inevitable that we shall get back to a straight system of competition and it is impossible for the applicant to make any long range plans for the maintenance of its plant in this city without having some idea as to the prices it is compelled to pay for gas and it should be established at the earliest date possible whether the factors which it says warrants a lower price of gas to it are factors which should be considered.

Now we will have to take our chances along with everyone else of increased prices to producers if Mr. Porter succeeds in his application but that has no direct bearing on our application. Our application deals with whether or not that price should be one price or whether it should be two or three prices and certainly has no bearing whatever on that portion of our application that relates to service by Madison and others in gathering, scrubbing and compressing gas. I do not think there is anything further that I have to add. I would repeat, sir, that Section 41 imposes no limitations on you with regard to hearing our application and Section 50 gives you the widest possible authority to fix rates that are not

Argument re Jurisdiction,
By Mr. Steer.

- 40 -

uniform.

THE CHAIRMAN: Any reply ?

MR. STEER: Without attempting to repeat what I said sir, there seems to be a misapprehension on my friend Mr. Auxier's part as to what I intended to say. He said there must be more than one price at the gate. By that he means the gate leading into the Canadian Western system. I do not dispute that there can be more than one price fixed by this Board but I say there cannot be more than one price fixed at the gate leading into the Canadian Western system depending upon the use that is ultimately to be made of that gas by various consumers. The proper place to fix more than one price and it is clearly indicated in my submission in the Act, to fix more than one price for the gas is at the outlet of the Madison scrubber and that the place must be contemplated by the Act because it says you can direct the proprietor of a public utility and I would point out that is the proprietor of the public utility referred to in Section 50 to sell the gas which has been dealt with under the first four sub-sections of Section 71 at prices, contemplating different prices, and quantities fixed by the Board to whom, to such retail or wholesale marketers and users of natural gas as the Board shall direct from time to time. But, that is a different thing in my respectful submission that there can be two prices at the gate leading into the one public utility and I say that Section 72 (c) contemplates only one price to a public utility.

Now the earlier words of Section 72-2 (c) which my friend refers to inevitably take us back to Section 71 (f) and I say 71 (f) contemplates different prices at the outlet of the Madison scrubber if that course seemed advisable and then I say the opening words of (c) gives the Board the power to fix the

1960

1960

1960

1960

1960

1960

1960

1960

1960

1960

1960

1960

1960

1960

1960

1960

1960

1960

1960

1960

1960

1960

1960

1960

1960

1960

1960

1960

1960

1960

1960

1960

1960

1960

Argument re Jurisdiction,
by Mr. Steer.

- 41 -

price, the just and reasonable price or prices for natural gas after it has been purified, but then they go on and specifically deal with one single price that is to be fixed at this gate that my friend talks about that leads to a public utility and we are talking here of a public utility which is distributing gas.

Now my friend says that there has got to be a variable gate price. Unless the Board of Public Utility Commissioners can direct the public utility, that is the Canadian Western, to sell below cost I say that is purely and simply a question of discrimination or otherwise and I say that anybody experienced in the public utility business knows that very often, and there are lots of cases on the point, very often a service is given below cost because it is in the interests of the whole of the consumers of the system to do that very thing. I think that is all I have to say. The whole question is one of discrimination.

MR. CHAMBERS: I think sir this statement I should make first in reply to my learned friend Mr. Auxier, that unless the Act sets forth in unambiguous terms that you have jurisdiction or it is necessary, that jurisdiction does not exist. You can speculate on what mistakes the Legislature made or what it intended but when we are dealing with statutory boards the law is clearly that the tribunal has not jurisdiction unless the Legislature has stated so in unambiguous terms, ' ' First of all to this question of review and I think something was said while I was out, but I do submit that the word review means that you look at or do something again. It implies that you are looking at something you have already looked at, not something new and that in itself indicates that no new evidence can be heard. I just refer you

Argument re Jurisdiction,
By Mr. Chambers.

- 42 -

sir to "Words and Phrases, the fifth series, volume 5, on page 150, under the title "Review" .

THE CHAIRMAN: That is in the Library ?

MR. CHAMBERS: Yes it is. I got it there. It is an American authority. The first paragraph deals with the words, Appeal and Review, and distinguishes Appeal and Review, because Review is usually the parties who heard it in the first place and the Appeal is by a Board. I will leave this with you and then I say if I am right in my premise that the Statute must clearly give the jurisdiction or it does not, I say that the facts throughout this Act on these price fixing sections and under Section 72 and under Section 71, all these various sections very carefully use the words, "price or prices" except when we come to this one part of sub-section (c) of 72, where they use the word "price" and that I suggest is significant in interpreting the Act. As regards Section 50, I merely reiterate what you yourself said to my learned friend in the course of his argument that Section 50 if it conferred all the jurisdiction that my learned friend contends it does, all these other sections are meaningless and that Section 50 is to be applied to the general and specific terms given throughout the Act.

Now then this may not deal with jurisdiction, but I am mentioning it because my friend has. He said we are not going broke at the moment but we cannot make plans for the future unless this thing is dealt with immediately. Now I refer you sir to Exhibit 176, which Mr. Colls filed and the concluding part of that statement he gave us the highlights of the cost, payroll \$748,000.00, gas bill \$231,000.00, that is the figure I would like. Power bill \$427,000.00, freight bill \$1,703,000.00. Now I think we are all aware that the railway

Argument re Jurisdiction,
By Mr. Chambers.

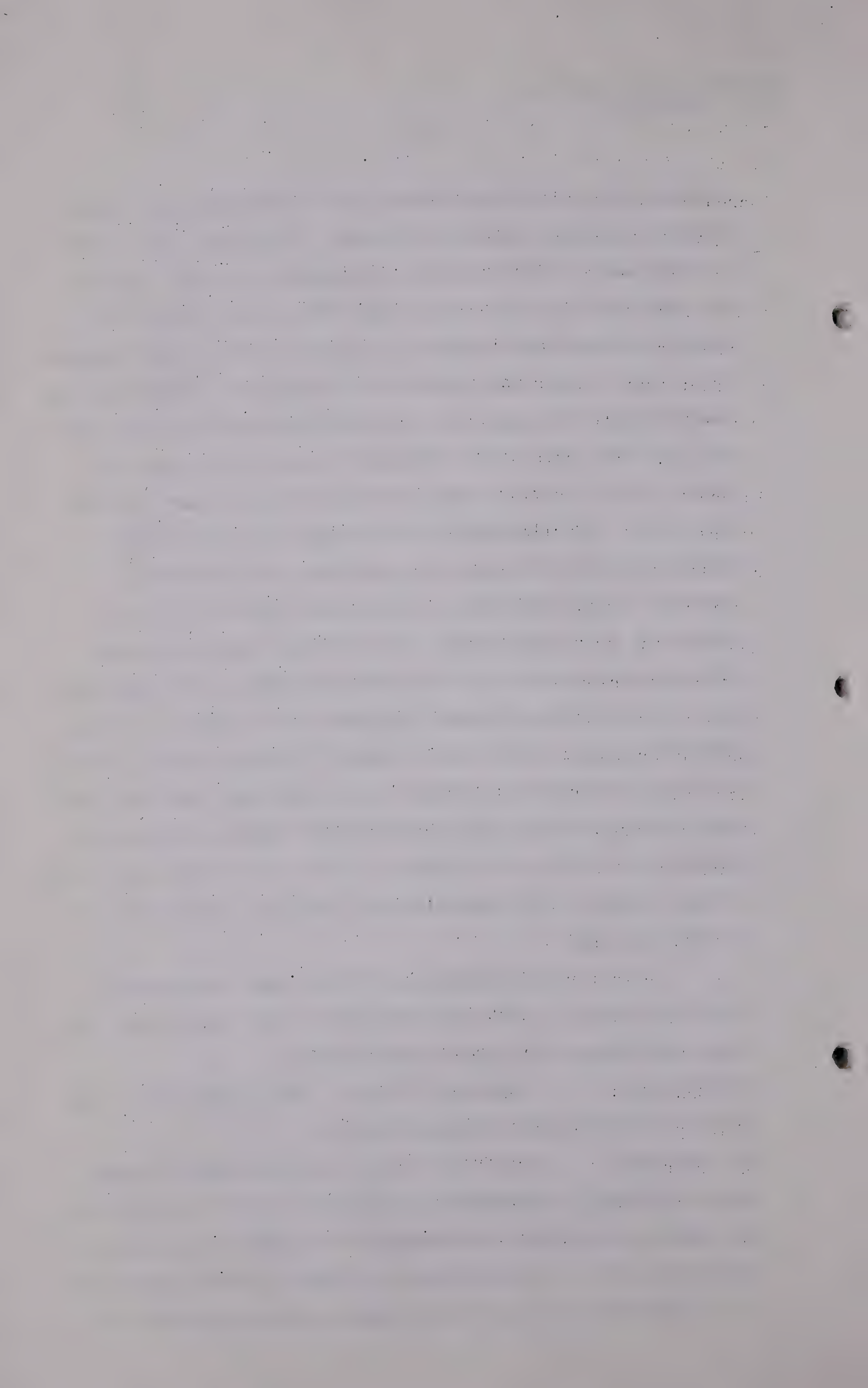
- 43 -

company, which one I am assuming and I understand has a substantial interest in this applicant, is applying for a 30% increase and I submit that this applicant no matter if we do give them gas for nothing that 30% of that freight bill being increased would render any action you may commit useless and as far as the Home situation is concerned I submit what my learned friend has said in saying that he has lost sight of the fact that Home or any producer is not a free agent in Turner Valley to make a deal with my friend's client or anybody else. The Legislature as a matter of policy in the interests of the Province as a whole has said producers, owners of these facilities, are not free agents. We are committing it to the Natural Gas Utilities Board to decide after consideration of the circumstances what is the greatest good for the greatest number, not what can be better for some particular person if he makes a deal. I submit whether or not the Home proposition goes ahead is a thing that involves a very much larger question than we can discuss today, all kinds of evidence and every other producer in the field might want to do the same thing. The Legislature has said you are not free to do what you like.

It does not necessarily follow that because Home would be prepared to do such and such is what can be done, but that other matters of policy are involved.

THE CHAIRMAN: Anything further ? Well, Gentlemen, I am going to adjourn until tomorrow morning.

MR. CHAMBERS: May I say this. I am strenuously asking that my friend's application for leave to amend his motion for an order to buy direct from Madison that that is a new matter altogether and it should not be allowed as an amendment, but if he thinks at a later date or tomorrow that he should be



Argument re Jurisdiction,
By Mr. Chambers.

- 44 -

allowed to launch the substance of that application.

MR. FENERTY: May I just say a word. I gather my friend's amendment is to meet the question of jurisdiction only. That is the position. We still have in all the reasons to be heard assuming at the moment that the Board felt it had jurisdiction or that this motion would be granted. Suppose either one of those would resolve in favour of my friend he still has this question of the probability or the possibility of proceeding with this Inquiry and the settlement of the price to be determined on the Home deal that has not opened up new reasons for reduction perhaps leading to a reduction on the basis of the Home.

MR. AUXIER: There is one other point I would like to make and that is with respect to Section 41. Supposing this client was just now coming into the city and you had just finished an application as you have finished and your decision has been given and they were now applying to be put on the line. Certainly I think it would be inconceivable that others, that they would be prohibited from hearing evidence concerning their position and reviewing your Order accordingly when it would make a change of that sort to the consumption of the system, the load factor and to everything else. I just mention that in explanation of what Section 41 must mean.

THE CHAIRMAN: Except that very point goes to the question of jurisdiction. Have I the power to say your Company will get a price at the gate and another Company a different price and still a third Company gets another price and the owner of a large house shall get a better price than the man with a shack.

MR. FENERTY: And the man who burns gas in his kitchen range and hot water has a uniform load and would be entitled to make a similar application.

M-2-7

Argument re Jurisdiction,

- 45 -

THE CHAIRMAN: I shall try to give you a decision tomorrow on the question of jurisdiction and further terms as to what we shall do according to which way my decision goes.

The Hearing was then adjourned to 10.00 o'clock A.M. May 20th, 1947.

: : : : : :

